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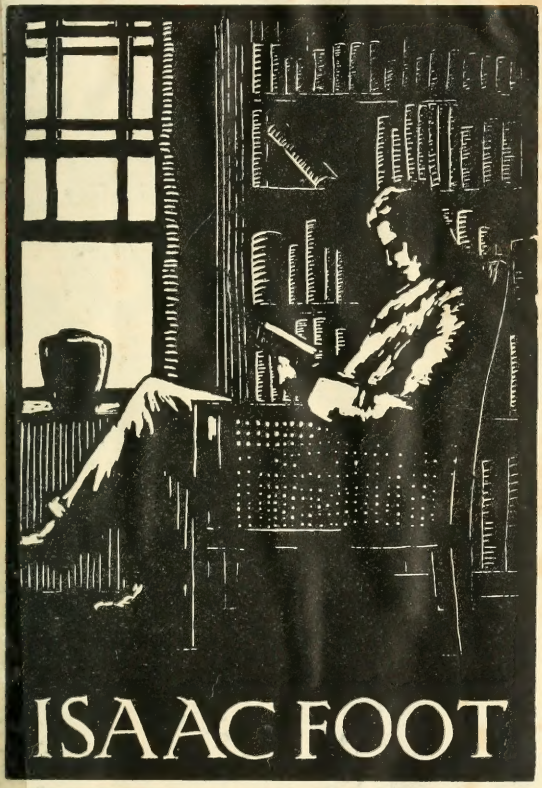
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CHARACTERS

OF

THE LATE

CHARLES JAMES FOX,

SELECTED,

AND IN PART WRITTEN,

BY PHILOPATRIS VARVICENSIS.

PARR, SAMUEL

Ὅρῳ δὲ καὶ κάνονι τῇ ἀληθείᾳ χρώμενοι, καὶ πρὸς ταύτην βλέποντες μόνον, ἄλλο δὲ οὐδὲν σκοπoῦντες, ὧν οἱ πολλοί τε καὶ ἔυωνοι, οὕτω καὶ ἐπαινεσόμεθα καὶ σιωπησόμεθα, τὰ ἐπαίνων ἢ σιωπῆς ἄξια. Πάντων δὲ ἀτοπώτατον, εἰ * * * * * τοὺς μὲν ἔξωθεν ἐπαινεῖν οὐ κωλύσει τὸ ἄγνωστον καὶ ἁμάρτυρον, τοὺς γινωσκομένους δὲ ἡ φιλία κωλύσει, καὶ ὁ παρὰ τῶν πόλλων φθόνος, καὶ τούτων μάλιστα τοὺς ἐνθένδε ἀπηλλαγμένους, καὶ ὃις ἄωρον τὸ χαρίζεσθαι, καταλιποῦσι μετὰ τῶν ἄλλων, καὶ τοὺς ἐπαινοῦντας ἢ ψέγοντας.

Gregor. Nazianz. tom. I. p. 177. ed. Paris, 1630. *Orat.* xi.

SOUTH DEVON LIBRARY

Vol. II.

LONDON:

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1809.

NOTES.

On "*adapting his matter*," page 180, line 4.

MARCUS Antonius, in the only book he ever wrote, professes "disertos se vidisse multos, eloquentem omnino "Neminem," and Cicero, who records this observation *, seems, in several passages to assent to it. But having described the "varia officia Oratoris," he says, "inventus prefecto est ille eloquens, quem nunquam vidit "Antonius. Quis est igitur is? Qui et humilia subtiliter, "et magna graviter, et mediocria temperate potest dicere." And again, "qui poterit parva summisse, modica temperate, "magna graviter dicere †."

Surely the foregoing words remind us of the variety which appeared in Mr. Fox's speeches, and the adaptation of his matter to his subject. Yet, as Cicero acknowledges, and very justly, that no speaker really possessed all those qualities in the high degree of excellence, which he and Anthony could conceive, and then professes to return, in Platonic language, ad Rei Formam et Speciem, I am content to say, that Mr. Fox only *approached* the character of a perfect orator. But what did he actually reach? I answer, with very little fear of contradiction from impartial and intelligent critics, that he possessed "Genus dicendi subtile "in probando, modicum in delectando, vehemens in flec-"tendo, in quo uno Vis omnis Oratoris est‡."

Or, I would say of Mr. Fox, as Cicero, referring to his own work called Brutus, did of Demosthenes, "Recordor me

* Cicero Orator, par. 18. † Par. 70, 71. Edit. Gronov.
‡ Par. 69.

" longe omnibus unum anteferre Demosthenem, qui Vim " accommodârit ad eam quam sentiam Eloquentiam, non ad " eam quam in aliquo ipse cognoverim. Hoc nec gravior " exstitit quisquam, nec callidior, nec temperatior*." I see great excellencies in some of Mr. Fox's contemporaries: but the fault which I chiefly impute to them is τὸ παντὶ κῶδωνας ἐξῆφθαι †.

" *Forbade him to exult*," page 181, line 7 from the bottom.

" ὥστε καὶ μεγαλόφρων καὶ μεγαλοπράγμων ὂυκ ἐκ " κενοῦ ἀυχήματος, ἀλλ' ἐξ ἐχεγγύε διανόιας δοκεῖν εἶναι ‡."

" *The language of Suetonius*," page 182, line 9.

" Genus eloquendi secutus est elegans et temperatum: " vitatis sententiarum ineptiis, atque inconcinnitate, et *re-* " *conditorum verborum*, ut ipse dicit, foetoribus. Præcipu- " amque curam duxit, sensum animi quam apertissime " exprimere §."

" *projected History*," page 182, line 15.

To Mr. Fox, as a writer of History, we may by anticipation apply what Cicero says of a Dialogue which he had composed,

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* Orator, par. 23. † Longin. sect. 23. ‡ Dio Cassius, Fragment 56. § Sueton. in Vit. August. Parag. 85.

and assigned to fictitious speakers, " de optimo Statu Civi-
" tatis, et de optimo Cive." " Hi Libri, cum in Tusculano
" mihi legerentur, audiente Sallustio, admonitus sum ab illo,
" multo majore Auctoritate illis de Rebus dici posse, si ipse
" loquerer de Republica, præsertim cum essem, non Hera-
" clides Ponticus, sed Consularis; et is qui in maximis versatus
" in Republica Rebus essem *." In one of my letters to Mr. Fox, when I had mentioned to him the impatience of the public to see his History, and had expressed my wish that he would take his own time in preparing it, I desired him to read what Cicero said of an historical work, which his friends importuned him to undertake. You will not be sorry to see it. " Postulatur a te jamdiu," says Atticus, " vel
" flagitatur potius Historia—atque ut audias quid ego sen-
" tiam, non solum videris eorum Studiis, qui Litteris de-
" lectantur, sed etiam Patriæ debere hoc Munus." Among other reasons which Cicero assigns for declining the task, he gives one which I particularly urged to Mr. Fox for not being in haste with his work. " Historia nec institui
" potest, nisi præparato Otio, nec *exiguo Tempore* absolvi:
" et ego Animi pendere soleo, cum semel quid orsus, tra-
" ducor alio, neque tam facile interrupta contexo, quam
" absolvo instituta †."

If I am not greatly mistaken, we shall find in Mr. Fox's History that exemption from all foreign idiom, and all affected phraseology, which Photius ascribes to Herodian: " ἔστι δὲ τὴν φράσιν σαφὴς καὶ λαμπρος καὶ ἡδὺς, καὶ λέξει
" χρώμενος σώφρονι, μήτε ὑπεραττικιζούσῃ, καὶ τὴν ἔμφυτον
" ἐξυβριζούσῃ χάριν τῆ συνήθως, μήτε πρὸς τὸ ταπεινὸν ἐκλε-
" λυμένῃ, καὶ τὴν ἔντεχνον ὑπεροφώσῃ γνῶσιν ‡."

Whether my conjectures about the style of Mr. Fox's history be right or wrong, I am sure that the matter contained in it will furnish us with additional opportunities for deciding on the justness of Polybius's remark, when he tells

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* Epist. ad Quint. frat. lib. iii. Epist. 5. † Lib. i. de Legib. par. 2, 3. ‡ Vid. Phot. Biblioth. sect. civ.

us "τὰ τῆς ἱστορίας ἔξει τότε καλῶς, ὅταν οἱ πραγμα-
"τικοὶ τῶν ἀνδρῶν γράφειν ἐπιχειρήσωσι τὰς ἱστορίας *,
"not negligently, but with the whole force of their minds,
"with the aid of long experience, and under the conviction
"that they must be unequal to the difficulties of their task,
"unless they brought with them τὴν ἐξ αὐτῶν τῶν πραγμάτων
"ἕξιν *." As to the spirit of our Friend's History, we most assuredly shall not find in it the τὸ μνησικακεῖν imputed to Thucydides by Dionys. Halicarnass. in Epist. ad Pomp. nor the faults which Polybius so earnestly and so frequently imputes to Timæus, who "παρεσκοτισμένος ὑπὸ τῆς ἰδίας
"πικρίας, τὰ μὲν ἐλαττώματα δυσμενικῶς καὶ μετ' ἀυξήσεως
"ἡμῖν ἐξήγγελκε, τὰ δὲ κατορθώματα συλλήβδην παραλέλοι-
"πεν *."

"*Taste*," page 182, line 6 from the bottom.

I have lately heard that Mr. Fox left one volume of his History fit for publication, and that it has been sent to the press. Though his principles and general habits of thinking will, I am persuaded, be discernible in this work, the character of the composition will be adapted to History, of which Quintilian says, and Mr. Fox well knew, "scri-
"bitur ad narrandum, non ad probandum; totumque opus
"non ad pugnam præsentem, sed ad memoriam posteri-
"tatis, et ingenii famam componitur †."

"*Metrical canons*," page 183, line 23.

You will not be displeased with me for applying to our

* Vid. Polyb. Megal. Histor. lib. xii. sect. 6. † Lib. x. cap. 1.

friend that which is recorded of Bazil and Gregory Nazianzen, two venerable fathers of the Christian church, who united great learning with great activity in their labours for the benefit of mankind: "γραμματικῆς μὲν αὐτοῖς, "ὀυδοτιοῦν παρεῖτο λαθὸν, ὀυ μέτρων ἐπιζήμη, ὀυ ποιητικὸι "σκοπὸι, καὶ τροπὸι: ὀυχ ἰσορίας πλῆθος, ὀυ πολιτικῆς λέξεως "καθαρότης: ῥητορικῆς δε τὸ τῆς φράσεως κάλλος ἁπαν- "ζησαμενοι, τὸ ψεῦδος ἐξέκλιναν*."

"*Recur to it frequently*," page 184, line 3 from the bottom.

These seeming repetitions in Mr. Fox's speeches, which offended shallow critics, were real excellencies. You remember the distinction made by Carneades, when he said, "Clitomachum eadem dicere, Charmidam autem eadem "eodem modo dicere†."

"*Than from Demosthenes*," page 185, line 4.

I differed from our friend upon the comparative merits of the Greek and Roman orators, and shall state my opinion in the words of Mr. Hume. "The manner of Demosthenes "is much more chaste and austere than that of Cicero. "Could it be copied, its success would be infallible over "a modern assembly. 'Tis rapid harmony, exactly adjusted "to the sense. 'Tis vehement reasoning, without any ap- "pearance of art. 'Tis disdain, anger, boldness, freedom,

* Vid. Greg. Nazianz. Vit. page 15, prefixed to his Works in the Paris edit. 1630, vol. i. † Cicero Orator. par. 158.

" involved in a continued stream of argument: and of all " human productions the orations of Demosthenes present " to us the models which approach the nearest to per- " fection *."

" *Garagantua's mouth*," page 185, line 24.

The passages which, in this and the following paragraph, are marked with inverted commas, are to be found in the third volume of Boswell's Memoirs of Johnson.

" *Remote analogies*," page 193, line 11.

I admit the convenience of a rule, and in the absence of more direct principles we must often be content with the aid of analogy. But Dr. Paley, I find, was struck, as well as myself, with the dimness of the analogical reasons at times employed in judicial pleadings, and says, " Whoever " takes up a volume of Reports will find most of the ar- " guments it contains capable of the same analogy which " the Dr. himself had employed in the controversy about " literary property;" but he adds, " the analogies I confess " are sometimes so entangled as not to be easily unravelled, " or even perceived †."

" *Æolus*," page 194, line 22.

" Non illi Imperium Pelagi, sævumque tridentem,
" Sed mihi Sorte datum: tenet ille immania saxa,

* Hume's Essay on Eloquence, vol. i. † Cap. ix.

" Vestras, Eure, Domos: illa se jactet in Aula,
" Aeolus, et clauso Ventorum Carcere regnet*."

" *Balance of equity*," page 197, line 7.

To say the truth, my own opinion does not very widely differ from that of Mr. Burke, and I shall avail myself of his eloquent language in expressing it. " If a man with " such masculine understanding, such a stout and resolute " heart, and of ambition so noble and generous as Mr. " George Grenville, had any defects not intrinsical, they " must be rather sought in the particular habits of his life. " He was bred in a profession. He was bred to the law, " which is in my opinion one of the first and noblest of " human sciences—a science which does more to quicken " and invigorate the understanding, than all the other kinds " of learning put together; but it is not apt, except in per- " sons very highly born, to open, and to liberalize the mind " exactly in the same proportion †."

" *Thomas Aquinas*," page 199, line 2 from the bottom.

The Commentary of Aquinas extends through the eight books of Aristotle's Politics; it was corrected after the collation of many MSS. and it is accompanied by the Latin translation of Leonardus Aretinus, to which another translation yet older is subjoined. Julianus Martinus Rota added four books written by T. Aquinas, De Regimine Principum. The angelic doctor contends stoutly for the superior usefulness of monarchy, and to say the truth, many of his observations are just, profound, and worthy of serious attention from royal and imperial readers.

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‡ Æneid, lib. i, line 142 † Burke's Works, vol. ii. p. 389.

"*Particular and offensive instances*," page 200, line 7.

Mr. Fox knew, as you and I do, that Cicero, who in his speeches for L. Muræna, and A. Cecina, laughed at the impertinent introduction of legal terms, and the solemn self-importance of those whom he calls rabulas de foro, and Leguleios, had been himself accustomed à primo Tempore Ætatis Juri studere—that he allowed those persons, "sum-"mos fuisse in Civitate sua viros qui id interpretari Po-"pulo et responsitare soliti essent"—that even where he says, eos magna professos, in parvis esse versatos, he grants Munus eorum qui consulerentur, esse Populo necessarium etiamsi esset exiguum*—that he praised the well-acquired and well-regulated knowledge of Aquilius in the very oration where he sarcastically taunted an antagonist, who had endeavoured eum ex Campo Æquitatis ad istas Verborum Angustias et ad omnes Litterarum Angulos revocare†—that he was the correspondent of Sulpitius‡, and not only addressed some of his letters, but dedicated his Topics to Trebatius, who, before his connection with Julius Cæsar, "must have laid the foundation of that Juridicial learning, "which, in the reign of Augustus had made him esteemed "the first lawyer of his age§."

"*Venal*," page 200, line 11.

To the really superficial, who at the same time are really venal, and to such persons only, would I apply the animated language of a great writer. "Little does the peace "of society require the aid of those lessons which teach men

* Vid. lib. i. de legibus. † Vid. Orat. pro Cæcina.
‡ Vid. Cic. Ep. ad Famil. lib. iv. 13. § Vid. Cic. Ep. lib. vii. and Middleton's Life of Cicero, vol. ii. p. 108, and Gravina, vol. i. p. 84.

" to accept of any thing as a reason, and to yield the same " abject and indiscriminating homage to the laws here which " is paid to the despot elsewhere. The fruits of such tu- " ition are visible enough in the character of that race of " men who have always occupied too large a space in the " circle of the profession: a passive and enervate race, ready " to swallow any thing, and to acquiesce in any thing: with " intellects incapable of distinguishing right from wrong, and " with affections alike indifferent to either: insensible, short- " sighted, obstinate: lethargic, yet liable to be driven into " convulsions by false terrors: deaf to the voice of reason and " public utility: obsequious only to the whisper of interest, " and to the beck of power *."

I do not agree with the writer of the foregoing paragraph, when in a moment of controversial ardor he seems to think that a large space in the circle of the profession has *always* been occupied by a race of men to whom laziness, shortsightedness, obstinacy, credulity and venality are to be imputed. But when I consider how much the rights of individuals and the welfare of the community depend upon the profession to which he alludes, I hold that a very small space occupied by a very small number of such persons as he describes, is too large for the public good. May we never see the day when it can be justly said of our own country, " nec quicquam publicæ mercis tam venale fuit " quam advocatorum perfidia †."

" *Supreme importance of law*," page 200, line 12.

The usefulness which I assign to laws, the reverence which I feel for them, and the obedience which I would

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* Vid. Preface to a Fragment on Government, p. xviii.

† Tacit. Annal. lib. xi. par. 2.

pay to them, are not incompatible with any of the foregoing observations upon certain peculiarities in the political speeches of the persons by whom they are administered. But they who hold, as I do, the indissoluble connection between good laws and good morals, will reflect on the importance of the following observation: "Σχέδον γὰρ τὰ "πολλὰ τῶν νομίμων τὰ ἀπο τῆς ὅλης ἀρετῆς προσταττόμενά "ἐστι· καθ' ἑκάστην γὰρ ἀρετὴν προστάττει ζῆν, καὶ καθ' "ἑκάστην μοχθηρίαν κωλύει ὁ νόμος*."

With exceptions, many, I confess, and serious, to the criminal code of this country, both in its provisions, and even its administration, I should generally adopt the language of Dr. Johnson, that "laws," enacted for the protection of property and life, "are the last result of human "wisdom, founded upon human experience for the benefit "of mankind." While they are unrepealed by the authority of the state, a good man will inculcate obedience to them, not only "for wrath, but for conscience' sake," and ballancing general against particular convenience, he will carry his own personal submission nearly to the extent for which Socrates pleads with the most impressive eloquence in the well-known dialogue with Crito. Whatsoever disproportion he may see between crimes and punishments, and whatsoever measures he may employ to lessen that disproportion by the force of argument, he will yet remember that jurisprudence is *seldom* at direct and unqualified variance with morality, that every crime forbidden produces *some* mischief to society, and that every punishment inflicted confers some security.

I believe this reasoning to be exact, and I trust that your conduct and my own will be strictly conformable to it. I cannot, however, dissemble from you, that my humanity shudders, and my sense of justice recoils at the recollection of certain "things as they are," in a country which boasts of its freedom, its generosity, and its unrivalled progress in useful knowledge. If those boasts be, as I think

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* Aristot. Ethic. ad Nicomach. lib. v. cap. 2.

they are are, well-founded, the lenient and equitable expedients for which many wise and good men* have pleaded again and again, might be proposed with the greater safety, and the surer result. If that knowledge be real, how can it be better employed than in teaching men to view the physical evil of punishment, not less than the physical evil of crimes, as a real deduction from the general stock of happiness—in calculating, so far as our limited insight into motives will permit us, the share that is to be assigned to infirmity, as well as malignity, in unlawful actions—in substituting, as other nations have done successfully, the restraints of shame for the dread of death—in presenting to common minds, distinctly and forcibly, the gradations of guilt by correspondent gradations of rigour—and in lessening the temptations to greater offences, when the commission of them seems to facilitate escape from *equal* penalties denounced against the less? If the *summum jus* be *summa injuria* in the transactions of individuals, who are condemned for yielding to the suggestions of the selfish and malignant passions, is it not possible that a state, armed as it ought to be with irresistible power, and governed, as the judicial concerns of it must be, by frail and fallible men, may sometimes step beyond the bounds of *real* necessity in the sanctions it affixes even to the most wholesome laws? May not the rulers of it be now and then actuated by the secret love of that power, which is more precious as it is more exempt from controul, and which, as self-delusion is always ready to suggest to the possessor, is most salutary, when it is most extensive? May not the very absence of corruption and venality in the administration of public justice decoy men into a delusive sort of self-complacency, and may not the very consciousness of impartiality in adherence to a known and fixed rule make them insensible, or at least inattentive, to the suggestions of compassion?

When the philosophy of Ethics has been called down,

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* Viz. Sir Thomas More, Erasmus, Johnson, Beccaria, Eden, Dagge, Voltaire, &c.

as was said of the *Socratici** *sermones*, from the sky† to the earth—when the principles of it, in the language of Bacon, "have been brought home to men's business and men's "bosoms"—when the rugged and austere rules of law in civil questions have been occasionally mitigated by corrective maxims drawn from equity—when our prisons by their goodly appearance display the munificence, if not the humanity of the country—when the miseries of the persons confined in them are in many respects alleviated, and when the ruthless and "steeled jailor is converted into a gentle "provost, the friend of men‡"—why do persons who upon *other* occasions shrink from palpable injustice and palpable cruelty—why, let me ask, in the exercise of their good sense and their benevolence for the welfare of their countrymen, do they stop short at the very point where life is to be taken away?—All the information I have been able to collect from writers upon jurisprudence both foreign and domestic, ancient and modern—all the conversations I have holden with persons, whether of common or uncommon sagacity—all the dangers either to the morals of individuals, or to the safety of the community, or to the authority of the laws themselves, which I have been able to trace as consequences of that uncertainty which makes even the sharpest statutes "their perch, not their terror to the birds of prey§"—consequences which must inevitably arise, when the head and the heart forbid the execution of a sentence, which the lips are compelled to pronounce—all these considerations forcibly convince me that *some* change is practicable, and therefore desirable. Why then are we left to deplore in some of our older laws, the savage ferocity of barbarous ages, and in many of our new ones, the cool, but undistinguishing and unrelenting jealousy, with which selfishness guards every avenue against encroachment upon its well-earned or ill-earned stores? Why do we in practice lose sight of Beccaria's observation, that "though the interest of com-"merce and property should be secured, commerce and

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* Horace, Od. 19. lib iii. † Cicer. Academ. Quæst. lib. i. ...ion 4. ‡ Measure for Measure. § ibid.

" property are not the ultimate end of the social compact,
" but the means of obtaining that end; and that to expose
" all the members of society to cruel laws in order to pre-
" serve them from evils necessarily occasioned by the infinite
" combinations which result from the actual state of politi-
" cal societies, would be to make the end subservient to the
" means, a paralogism in all sciences and particularly in
" politics*?" I admit the danger of many political reforms, which have been recommended by arguments rather specious than solid—I admit the indirect efficacy of political events and political measures in correcting political abuses, while laws unrepealed remain, and in truth ought to remain, undisturbed by the interposition of private judgment, and the influence of local and temporary circumstances; and upon this very property of stability I should ground the necessity of the utmost possible precaution in enacting them—I admit the danger of sweeping alterations in that code, which provides for the security and the transfer of property in all its various modes—I admit that the increase of those variations, arising from the increased means of accumulation and the increased diversities of enjoyment, may call for new regulations—But on the subject of our penal code and upon this *only* I must, in common with many other calm and reflecting observers, wish for the " *una litura* †."

Do not suppose, dear Sir, that for one hour I would leave the public without effectual protection, or that I forget a custom recorded of the Persians, among whom the laws upon the death of their sovereign were suspended for the space of five days, in order to mark the necessity of resuming and enforcing them ‡. No—that *litura* should be *instantaneously* followed by a well-considered system of jurisprudence, in the preparation of which professional men, such

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* Vid. note to chap. xxxiv. ed. 4.

† " Non multæ possunt nostros, Faustine, lituræ
" Emendare libros; una litura potest." MARTIAL.

‡ Vid. Stobæus, p. 294, and Sextus Empiricus, adv. Mathemat. p. 70.

as have been tried and approved amongst us, should sustain the part of assessors to sages, such as I could name, and to the provisions of which we might upon the best ground apply the best definition of law I ever read. "Νὲς ἄνευ "ὀρέξεως πᾶς ὁ νόμος ἐστί*."

I hope, dear Sir, that neither you nor any other intelligent man will put a captious interpretation upon my use of the emphatical phrase "*una litura.*" I have employed it with much deliberation. I do not mean by it that any of the offences, which the laws now restrain as injurious to society, should meet with impunity, or that the penalties now affixed to treason, to murder, and a few other heinous crimes should be mitigated. But I do mean, that of the milder punishments some should be softened, and others increased—that transportation, or imprisonment, or punishments carrying with them great pain or great infamy should be substituted for death—that death should be denounced by the authority of the laws themselves, rather than inflicted by the discretion of the executive government, against the third or fourth repetition of many crimes which are now in the first instance capital—that this principle, which now is adopted in a few cases, should be extended to more—and that in order to prevent the useless and numberless disputes, which in the discussions of a popular assembly are likely to arise, from the proposed repeal of penal statutes, one after another in detail, the new code should be ushered in by a most precise and most wary preamble, revoking all former statutes in the mass, and declaring that crimes should hereafter be punished under the circumstances and according to the degrees stated in that code. I suppose not only the code itself to be sanctioned by parliamentary authority, but the persons who prepare it to be appointed by the same authority, without the smallest respect to party differences, and from a firm conviction that they who are called to this momentous task are really and largely endowed with every intellectual and every moral

* Aristot. de Republica, lib. iii. cap. 16.

qualification. I hope not to be thought romantic in expressing a farther wish, that once or twice every year, upon the approach of the assizes, an abridgement of the code itself should be read in every parochial church, and that this ceremony should be accompanied by a judicious and most solemn homily, composed by the most enlightened ecclesiastics, and sanctioned by the public authority both of the church and the state. Such a practice would give real propriety and real efficacy to the well-known maxim, "ignorantia legis neminem excusat."

"The punishment of crimes," says Beccaria, "cannot "be just (that is necessary) if the laws have not endeavoured to prevent that crime by the best means which "times and circumstances would allow *." But can it be doubted that promulgation is one among the necessary means of prevention? False and pernicious is the doctrine that men are slaves, when they are required to obey laws made by other men. But they surely must be deficient in the duties of good subjects, when they are called upon to obey laws not understood, nor even known by themselves.

In respect to the civil code of this country, the proceedings at law by the statute IV. Georg. II. chap. 26, "were done into English in order that the common people "might have knowledge and understanding of what was alledged or done for and against them in the process and "pleadings, the judgments and entries in a cause." Yet we are told by Blackstone †, "that he knows not how well it "has answered the purpose, but he is apt to suspect that "the people are now, after many years experience, altogether as ignorant in matters of law as before." How far a remedy may be applied to that ignorance in matters of property I know not. But the promulgation which I recommend would exclude all such pleas of ignorance upon those statutes which create offences, and command punishments.

"There needs," says the same writer, "no formal promulgation to give an act of parliament the force of a law,

* Chap. xxi. † Commentaries, vol. iii.

" as was necessary by the civil law with regard to the Em-
" peror's edicts; because every man in England is in judg-
" ment of law party to the making an act of Parliament,
" being present thereat by his representatives *." Blackstone's antagonist comments very sharply on the foregoing passage. " This," says he, " for ought I know may be good " *judgment in law*, because any thing may be called judg-
" ment of law that comes from a lawyer that has got a
" name. It seems, however, not much like any thing that
" can be called judgment of common sense †."

If by the force of a law be meant the right of exacting obedience from subjects, the reason assigned by Blackstone seems to me also farfetched. It might involve many idle disputes about actual and virtual representation, and leaves room for many absurd claims of exemption from obedience among those who should be inclined to contend, that not being actually represented, they were no parties to a statute, and are therefore not bound by it. Force, as meaning the right of demanding obedience, is communicated to laws directly and solely by the authority of the legislature itself. But administration is necessary to give efficacy to laws, and without promulgation it were unjust to administer them. For how shall subjects obey that in which they have not believed? " Or how," as St. Paul reasons, " shall they believe " that of which they have not heard? Or how shall they " learn without a teacher? And how shall they teach, except they be sent" and commissioned to do so?

If the subject were not of such infinite importance I should be content to smile at the refinement or fiction of Blackstone, when he states the supposed presence of every subject at the enactment of laws, to supersede the necessity of formal promulgation. Magistrates, when they are required to execute statutes, are furnished with copies of them. But Subjects when they are forbidden to commit an offence, and threatened with exile, or imprisonment, or

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* Comm. Vol. I. Chap. ii. p. 178. † See Pref. to a Fragment on Government, p. 27.

death, for committing it, are left to find out the meaning and very existence of a statute as they can. The fact is notorious, and I remember the perilous situation of two unhappy young men who had ignorantly subjected themselves to death by violating a recent provision against a particular kind of forgery.

The dogmas which with so much confidence of assertion, and so little conformity to facts, are every day advanced upon promulgation, example, and other matters closely connected with the lives of men and the safety of society, compel me to look for refuge in the judgment of a writer, who beyond all his contemporaries is entitled to the honourable appellation bestowed upon Thalelæus, "qui "ob scientiæ præstantiam dictus fuit νομικῆς ὀφθαλμός*." "Punishments must be inefficacious where the penal pro- "vision is not conveyed to the notice of the person on "whom it seems intended that it should operate. Such "is the case where the law has omitted to employ any "of the expedients which are necessary, to make sure "that every person whatsoever, who is within the reach "of the law, be apprized of all the cases whatsoever, in "which (being in the station of life he is in) he can be "subjected to the penalties of the law†."

We read of a Roman Emperor, "Qui proposuit quidem "legem: sed et minutissimis literis et angustissimo loco, uti "ne cui describere liceret‡." An English legislator would shudder at the thought of imitating Caligula's deliberation. But his negligence in giving notoriety to coercive laws which create offences, impose obligation, and command punishments§, must tend to produce a similar effect Common sense and common humanity require that the "utmost possible care "should be taken to lay before every man of whom obedi-

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* Gravina, vol. i. p. 135. † Bentham's Introduction, chap. xiii. ‡ Suetonius in Vita Caligulæ, parag. 41.
§ Vid. Bentham, p. 329.

" ence is required, the clearest and most accurate view of " that ideal object of which the part, the whole, the multiple, " or an assemblage of parts, wholes and multiples mixed to- " gether, is exhibited by a statute *." A judge might then with better effect enquire, Quo animo fecerit, in reference to the legal, rather than the moral properties of an action.

" The learned and humane observer on the ancient " statutes has suggested that a reformation of the English " law can never be effectually carried on without the assist- " ance of able lawyers not members of the legislature. " With such assistance it might perhaps be easy to frame " separate declaratory statutes relative to each class of " crimes, comprehending all the descriptions and degrees " of each crime, with their proportionate punishments. " Every such declaratory statute should be attended by a " supplemental bill, repealing all prior provisions relative " to the class of crimes in that statute contained. It seems " superfluous to point out the many collateral good effects " which might arise from this method of seeking the end pro- " posed. The repeal of particular statutes without such pre- " paratory caution will be found a mere palliative remedy, " which may tend indeed to abate the symptoms of the dis- " ease, but from which a radical cure cannot be expected †."

I see with much satisfaction, that between the excellent writer above quoted‡ by Mr. Dagge, and myself, there is no very wide difference in principle. I wish, as Mr. Barrington does, men in parliament to have the assistance of lawyers who are not in parliament. They may bring equal abilities to the task, and perhaps in some cases they may be able to devote more time to it. But I think that the labours of both will be facilitated, and their regulations improved by the farther assistance of studious persons whose talents have long been employed on the general science of jurisprudence, whose legal knowledge is accompanied by extensive reading in history, and by a spirit truly philosophical, and whose minds are whol-

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* Vid. Bentham, p. 328. † See Dagge, vol. iii. p. 78.

‡ Mr. Barrington.

ly exempt from those prejudices which always arise more or less from professional pursuits, thoughts, and actions. It is plain that Mr. Barrington believed many amendments in our penal statutes to be necessary, and from the multiplicity and variety of the subjects which must be discussed by those who would reform them, I am led to think that a general repeal, followed up by a general re-enactment, would be more easy and more efficacious than a series of separate declaratory statutes. When the whole body of the code was under contemplation it would be more practicable, not only according to the opinion of Covarravias, " to observe the " rule of distributive justice in different species or degrees " of the same crime, but to introduce the same measure of " distributive justice between one crime and another *."

In opposition to these opinions, persons, I am aware, will not be wanting, who like Cato the Censor, " legem " ullam omnino abrogari indignentur;" and to such persons I should reply in the words of Valerius, " Quemadmodum " ex iis legibus, quæ non in tempus aliquod, sed perpetuæ " utilitatis causa, in æternum latæ sunt, nullam abrogari " debere fateor, *nisi* quam, aut usus coarguit, aut status " aliquis reipublicæ inutilem fecit, sic quas tempora aliqua " desiderarunt leges, mortales, ut ita dicam, et temporibus " ipsis mutabiles esse video†." It were absurd to talk of danger from a general repeal of former statutes, when it is to be immediately succeeded by the enactment and promulgation of new ones.

" There are certain aphorisms," says Dagge, " which " men of weak minds or interested views are always ready " to apply, for want of solid reasons to support their ob- " jections. When any scheme of improvement is offered, " hundreds will tell you that innovations are dangerous, for " one who is capable of pointing out where the apprehended " danger lies."

" Should this maxim prevail in the extent to which " some are desirous to stretch it, our laws would become

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* Dagge, vol. i. p. 258. † Liv. lib. xxxiv. Par. 6.

" like those of some Eastern nations we read of, immutable. " But innovations are then only dangerous, when they are " not founded on reason and justice, and when they are not " introduced at a proper time and with suitable caution."

" In truth we are apt to be swayed too much by politi- " cal maxims and the pretended necessity of things; there " are many principles in the administration of government " inconsistent with right-reason and strict justice, which " political casuists attempt to vindicate by the general plea " of necessity, and by making subtle and extravagant dis- " tinctions between political and moral virtue, which have " no real foundation in nature."

" The bulk of the people from their indolence and in- " capacity, judge every model to be perfect to which they are " accustomed, and think whatever is, is necessary to be done. " They are enemies to innovations because they are too " short-sighted to perceive the good which may result, or " too inert to oppose the inconveniences which may ensue " from a change *."

But let us hear what are the sentiments of a writer who is far superior to Dagge in depth of research, and precision of reasoning, and from whose work, as it is now very scarce, I shall not apologize for the length of the following quotation.

" It is wonderful how forward some have been to look " upon it as a kind of presumption, and ingratitude, and re- " bellion, and cruelty, and I know not what besides, not to " alledge only, nor to own, but to suffer any one so much " as to imagine, that an old established law could in any res- " pect be a fit object of condemnation. Whether it has been " a kind of *personification* that has been the cause of this, as " if the law were a living creature, or whether it has been the " mechanical veneration for antiquity, or what other delusion " of the fancy I shall not here enquire. For my part I " know not for what good reason it is that the merit of

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* Vid. Dagge's Considerations on Criminal Law, cap. 3 and 2.

" justifying a law when right should have been thought " greater, than that of censuring it when wrong. Under a " government of laws what is the motto of a good citizen? " *To obey punctually; to censure freely.*

" Thus much is certain; that a system that is never " to be censured will never be improved; that if nothing is " ever to be found fault with, nothing will ever be mended; " and that a resolution to justify every thing at any rate, " and to disapprove of nothing, is a resolution which pur- " sued in future must stand as an effectual bar to all the " *additional* happiness we can ever hope for; pursued hi- " therto would have robbed us of that share of happiness " which we enjoy already.

" For is a disposition to find 'every thing as it should " be,' less at variance with itself than with reason and uti- " lity? The common place arguments in which it vents it- " self justify not what is established in effect any more than " they condemn it: since whatever *now* is establishment " *once* was innovation *."

If a reflecting and benevolent foreigner were to examine our Statute Book, where Death is commissioned " to keep " the fatal key" of so many cells, and " to shake a dread- " ful dart †" in so many directions, his soul would be wrung with anguish: and, unless he were told that common sense wages a perpetual war with positive institutions, and that the malefactors annually executed fall very short of the number annually condemned, he would suspect that every accuser is a Lycurgus ‡, every judge, a Cassius §, and every legislator, a Draco ‖.

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* Preface to Fragment on Government, p. 14. † Milton.

‡ I mean the Athenian Orator, who is called by Cicero in Brut. " accusator vehemens et molestus." See Dr. Taylor's Preface to Lycurgus.

§ Lucius Cassius, the Roman Prætor, " cujus tribunal prop- " ter nimiam severitatem scopulus reorum dicebatur." See Val. Maxim. lib. iii. cap. 7.

‖ Vid. Gravina, vol. i. p. 233.

Tarda sunt, we read in Tacitus*, *quæ in commune expostulantur*. The day of reformation among ourselves is, I am told, very distant. The pride of communities, like the pride of individuals, is wounded by the bare mention of their inconsistency, and their ingenuity supplies them abundantly with arguments from real mischiefs, when they are intent upon providing against such as are imaginary or exaggerated. The actual multiplication of penal statutes—the lapse of a century without the repeal of more than two or three, even under an enlightened government, and among a public-spirited people—the prompt and courtly acquiescence of large bodies in every suggestion of dangers from quarters where professional experience is presumed to carry with it sound and dispassionate judgment—the stubborn prejudices of those who confound the right and the ability to administer laws with the numberless qualifications which are requisite to enact or to modify them—the languid sympathy of the higher orders with the lower upon the sight of evils which they are themselves under little or no temptation to incur—the unfeeling temper which is generated among all ranks by growing wealth and growing luxury—the systematic severity exercised against some classes of crimes, which though bearing a common name are accompanied by countless diversities of extenuating as well as aggravating circumstances—nay, the conscious superiority of a constitution which is daily and hourly recognized in its beneficial effects, and which reconciles our vanity and our indolence to the continuance of many concomitant abuses—these and other causes which it were invidious to enumerate, lead me to apprehend that in *one* race of glory this country will be outrun by some neighbouring states, where the recent mitigation of their punishments affords some compensation for their political thraldom.

Blackstone did not indiscriminately condemn the infliction of death; nor was he indifferent to the reputation of the English laws. But can we suppose that he had no view

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* Annal. lib. iv. par. 7. Edit. Lipsic.

to the reform of those laws, and that he meant, not to hold up an example, but merely to state a fact, when he thus wrote, "Was the vast territory of all the Russias worse "under the late Empress Elizabeth than under her more "sanguinary predecessors? Is it now under Catherine II. less "civilized, less social, less secure? And yet we are assured "that neither of these illustrious princesses have, throughout "their whole administration inflicted the penalty of death; "and the latter has, upon full persuasion of its being use-"less, nay even pernicious, given orders for abolishing it "entirely throughout her extensive dominions. But indeed "were capital punishments proved by experience to be a "sure and effectual remedy, that would not prove the ne-"cessity (upon which the justness and propriety depend) "of inflicting them upon all occasions when other expedi-"ents fail. I fear this reasoning would extend a great deal "too far*."

The measures of the two Russian sovereigns excite greater surprise, and calls for stronger approbation, when we reflect that at no very distant period the Czar Peter, "though ac-"tuated with a noble genius and smit with the love and "admiration of European arts, yet professed an esteem for "the Turkish policy in one particular, that he approved of "such summary decisions of causes as are practised in that "barbarous monarchy, where the judges are not restrained "by any methods, forms, or laws; and that he did not per-"ceive how contrary such a practice would have been to all "his other endeavours for refining his people†."

I well know the facility with which despotic power enabled the successors of Peter to reform the laws of their subjects. But it were strange to suppose that a free people are not equally capable of using, and equally desirous of obtaining a mild system of legislation, with men who are inured to slavery. It were indecent to assert that the councils of any foreign sovereign should have the power of doing that suddenly and gratuitously, which the enlightened Par-

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* Book iv. ch. 1. † Hume, Essay 14.

liament of an enlightened nation can not do deliberately and effectually.

Montesquieu had observed before Blackstone "how industriously the Russian government endeavoured to temper its arbitrary power by breaking their numerous guards, mitigating criminal punishments, erecting tribunals, entering into a knowledge of law, and instructing the people *."

A despotic government has thus stept before our own free government in the mitigation of capital punishments. The Duke of Tuscany is said to have introduced a similar regulation † in his dominions, nor have I heard of any great public inconvenience arising from it. Future writers on jurisprudence, therefore, will not fail to remark that the experiment has been made both in an extensive and a small state. I am aware that the example of America may not be quite conclusive in reasoning upon the laws of England—But the general approbation with which the American states looked upon those laws, gives great weight to the opinion which they had formed of our penal code.

"Though both the penal and common laws of England are generally adopted in the United States, the punishments differ materially: but it will be admitted that they are sufficiently proportioned to the crimes. In very few cases indeed, in any state, is the punishment of death inflicted. Legislative bodies consider, that the laws of man should seldom extend to the extermination of that life which was given by the Almighty. In Pennsylvania of late years capital punishments are remitted in all cases, I believe, except treason, or murder in the first degree, and in the latter case, death is seldom inflicted ‡."

"Though law," says Mr. Hume §, "the source of all security and happiness, arises late in any government, and

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* Book v. chap. 14.

† Murder and treason only were to be punished with death.

‡ Vid. Janson's Stranger in America, p. 182. § Essay xiv.

" is the slow product of order and liberty, it is not preserved " with the same difficulty with which it is produced, but when " it has once taken root, is an hardy plant, which will " scarce ever perish through the ill culture of men, or the " rigour of the seasons." Happily for mankind the observation of Mr. Hume is very true, as applied to those laws which are the *real* sources of social happiness. " What is " profitable," as the same writer says, " to every mortal, " and in common life, when once discovered, can scarce " ever perish, but by the total subversion of society, and " by such furious inundations of barbarous invaders as " obliterate all memory of former arts and civility." But the misfortune is, that from mistaken views of public security, tares will be sown with the wheat, and that having once taken root they too become hardy plants, which are slowly extirpated by the culture of reason. Of this we have a notable instance in the laws against witchcraft, of which the long continuance is a disgrace to our statute book, and the very late repeal illustrates my position, that in governments less free than our own, rational Jurisprudence *sometimes* makes a quicker progress.

It was enacted by statute IX. of George II. that no prosecutions should be carried on for the future against any person for witchcraft or enchantment. But let us not forget that the statute of Henry VIII. against this crime, and another statute of James I. of which Blackstone*, gravely tells us that he did not class it under the head of improvements made in that reign, had long continued in force. True it is that executions for this crime, which Blackstone most unaccountably calls dubious, and which every Judge now upon the bench would call impossible, are at an end. But it so happens that in this instance of legislation, as well as in many other instances of arts and science, France has the praise of invention, and England only that of imitation.

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* Book iv. chap. 34.

Many an honest Englishman, who disbelieves witchcraft and boasts of his own constitution, would feel some surprise when he was told on the authority of a learned judge, that in protecting old women from the gallows for being witches, the legislature of France had taken the lead of our own, " which," as Blackstone says, " *at length followed* the " wise example of Louis XIV. in France, who thought proper " by an edict to restrain the tribunal of justice from receiving " informations of witchcraft*."

No human being can reverence more than I do, the excellence of the English constitution. But I am unwilling to accept that excellence as a compensation for the severity of our penal code, and I suspect the justness of that reasoning which employs our liberty as a pretext for continuing that severity. Dr. Paley, I remember, tells us, " that the " liberties of a free people, and still more the jealousy with " which they are watched, and by which they are main- " tained, permit not those precautions and restraints, that " inspection, scrutiny, and control which are exercised with " success in arbitrary governments, where in proportion as " they render the commission or concealment of crimes " more difficult, they subtract from the necessity of severe " punishment †." I shall never allow that the liberty of a people increases the *necessity* of severe punishment, till all other expedients, from hard labour, from infamy, from long imprisonment, or solitary confinement have been tried in vain. I shall not allow the validity of that reasoning, till experience has shewn whether a stricter police be not compatible with the preservation of our political liberty. The argument of Dr. Paley applies chiefly, if not solely, to those crimes which are accompanied with violence. But a very considerable portion of the offences for which malefactors suffer among us, are perpetrated without violence; and for the prevention of those which are committed with violence, persons who look with a jealous eye upon the invasion of

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* Book iv. cap. 4. † Chap. ix.

our liberty, have often expressed their wishes for a more vigilant and active police. To me it seems, that in the administration of such police we should have little reason to be alarmed about the loss of our liberty, because the crimes against which that police is pointed have a more intimate and more visible connection with the happiness and security of men in private life, than with the peculiar interests of the government. If the experiment were made we might find that the diminution of capital punishments, together with the increased security of the public from a stronger police, would be accepted as an ample compensation for all concomitant inconveniencies. Such a police would not require the summary proceedings of "mili- "tary law." Our streets and public roads need not be "travelled and patrolled by soldiers;" but they might be guarded by other persons, who should be appointed, not by the Sovereign immediately, but by Magistrates—who should be paid, not from the public treasury, but from County Funds—who should wear, not the dress of a soldier, but some other badge, which should mark their office. Thus appointed, thus recompensed, and thus accoutred, they would not appear to us the instruments of despotism. Suspected persons might without injury to our freedom, be in some cases detained longer than they now are. Men might be apprehended not on "mere suggestions," but upon strong proofs of "idleness or vagrancy." Accounts of a man's time, employment, and means of subsistence might be demanded, not at the arbitrary "pleasure," but the sound discretion of the magistrate; and the responsibility of the magistrate himself would afford reasonable security against the abuse of his power. We might recall and modify that ancient institution which Mr. Eden pronounces to be "full of reason and humanity, and which dividing "the people into certain classes, compelled the several "neighbourhoods or divisions of men to become mutual "pledges for the good behaviour of the individuals who "composed them; and consequently when any offence was "committed within their district, either to produce the "offender, or become liable to such penalty, as might be

" thought proportionable to the peace of society*." Many other expedients, neither arbitrary nor rigorous, might be employed with effect, and that effect would appear to be very good, not only as preventing the commission of crimes, but as subtracting from the necessity of punishing them severely, when they were committed and detected.

I hope that the constitution of England will always be alledged as a reason for increased lenity in the laws, and my opinion is supported by such authority as should protect me from the imputation of rashness. Montesquieu† observes, " that all laws should be relative to the principles " of the government, to the nature of the climate, to the " morals, manners and religion of the people, and to the " number of inhabitants." My concern is with the first only, and my sentiments upon them in relation to our criminal laws, shall be given in the words of Mr. Dagge. " It would be easy to prove," says he upon the authority of Montesquieu, " that in all, or almost all of the states of " Europe the rigour of punishments has diminished or aug- " mented in proportion as they approached towards or de- " viated from liberty."

Dagge illustrates this proposition by various instances drawn from history. He quotes a remark of the Chinese writers, that on the eve of a revolution there was always a great increase of rigorous punishment, and that a corruption of morals kept pace with their progressive severity. He contrasts the laws of Draco with those of Solon among the Athenians, and states as the result of his enquiry, " that " the rigour of the Athenian laws was mitigated in propor- " tion as liberty gained strength and ascendancy." He then examines the Roman government, where the laws were mild and the morals comparatively pure in the days of freedom: but where offences multiplied with penalties, and severity,

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* Vid. Eden's Penal Law, cap. 8, and the Quotation from Wilkins's leges Edwardi.

† Book i. chap. 3.

from its natural tendency to debase the mind, destroyed the dignity of virtue, when tyranny and usurpation lorded it over the liberties of a corrupt people.

After tracing the imperfection of our own law under the old feudal system, and the causes of that imperfection, he thus proceeds, " It is remarkable that the first who res- " trained the benefit of the clergy was Henry VII. a politic " and ambitious prince, who supported a precarious title " by rigorous institutions; and by late statutes it is entirely " taken away in a multitude of offences. But what appears " most extraordinary and unaccountable is, that the greatest " part of the crimes for which offenders are excluded from " their clergy, have been declared capital since the Revo- " lution. If the proposition above quoted is true, 'That " in all or most countries of Europe the rigour of punish- " ments has diminished or augmented in proportion as they " favoured* or discouraged liberty,' then how shall we re- " concile this practice since the Revolution, with the prin- " ciples of the constitution?"

" It is well known that at the Revolution the plan of " liberty was extended and our religious and civil rights at " that time received confirmation and enlargement. Here " then one might conclude there was room for a milder " system of government."

" Nevertheless we find that the sum of capital punish- " ments has been considerably augmented since that happy " period, and there must certainly be an error in legislature " when laws are enacted against the principles of the con- " stitution."

" The ruling principle of government in this kingdom is " allowed to be liberty; but our criminal laws seem ra- " ther calculated to keep slaves in awe, than to govern " free men. They seem to contradict all notions of justice, " and confound all distinctions of morality. By the igno- " miny they impose in many cases they bend the mind to

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* Vid. Montesquieu, book vi. chap. 9.

" the lowest state of servitude: by the rigour they indiscri-
" minately inflict they adopt the principles of despotism,
" and make fear the motive of obedience."

" Despotism itself may indeed teach us milder institu-
" tions; for we are told that in Russia during the reigns of
" the late Empress Elizabeth, and the present Empress
" Catharine II. no malefactors have been put to death."

" It may be affirmed that were the injured themselves
" to be intrusted with the right of revenge, their sentence
" would not, in general, be so rigorous as that of the law,
" for few men in the present civilized state have that violent
" resentment against many offences which the law has
" exprest, and we find that they rather suffer crimes to go
" unpunished, than to be the instruments of punishing them
" too severely."

" Thus by impunity wicked men are confirmed in the
" habitude of evil till they become totally corrupt and
" abandoned, and thus the laws counteract their own end.
" They tend to corrupt rather than reform the morals of
" the people; they are repugnant to the dictates of reason
" and justice, and diametrically opposite to the principles
" of our constitution *."

The facts stated by Mr. Dagge are so important, and the remarks he makes upon them so just, that I shall not apologise for quoting them so largely, from a work which I believe not to be read so extensively as it deserves.

By the direct and indirect, the constant and occasional, the visible and invisible agency of those causes which connect the affairs of private and public life, the genius of every government will impress much of its own character upon the opinions and manners of the people; and wheresoever under the protection of laws and the influence of custom, real freedom is, *there* will be found many powerful aids to real virtue. Hence the tendency of such a constitution as our own is, to make men good subjects, not only to earthly powers, but to the moral government of God; not only to

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* Considerations on Criminal Law, vol. I. chap. vii.

increase the number of good men, but to counteract the example, and to soften, in some measure, the malignity of the bad. If, therefore, the rulers of this world would reflect deeply and seriously on the whole process of that government, and the whole moral frame of the beings who are to live under it—if they felt, that punishment is justifiable in the degree, and *only* in the degree, in which it is experimentally found to be corrective—if they kept a watch on the *latent* deceitfulness of that vindictive spirit, which in its *undisguised* deformity they always disclaim, they would see that man acts both a wiser and a better part, when he discerns at once the folly and the impiety of "biting laws," when he marks, but is not "*extreme* to mark what is done "amiss," and when having, and being known "to have, "mercy, he is *therefore* to be feared."

The spotless and peerless integrity of English Judges in the decision of civil cases is a subject of well-founded exultation to every Englishman, who considers that property is one great bond of society, and that security under judicious and effectual laws is perhaps the most precious quality of property itself. But our penal code, I must confess, presents to my mind the image of a gloomy cave, where Death enthroned represents the majesty of Justice, and where, as he stretches forth a scroll crowded with huge and hideous characters of condemnation, and scarcely affording to the eye, wearied in its descent through accumulated horrors, even a momentary relief by one erasure, he scares away the curiosity of every humane observer from contemplating the dreary scene,

"*Ubi nos* vestigia terrent
"*Tot mortem* adversum spectantia, nulla retrorsum."

Yet, in the administration of that very code, I have witnessed many painful struggles between the feelings of nature, and the duties of office; and I have also seen some instances in which the infirmities and informalities of compassion were ill exchanged for that, which in my scale of morality, falls little short of blood-guiltiness.

" Qui fruitur pœna, ferus est, legumque videtur
" Vindictam præstare sibi*."

At this very hour do I shrink, when my imagination presents to me the spectres of three furred *ανδρόκλονοι*, in whose abilities, as exercised in trials for capital offences, " not light, " but darkness visible, served only to discover sights of " woe."

With learning, taste, and genius which adorned the head, but improved not the heart, one of them was a sober, subtle, inexorable interpreter and enforcer of sanguinary statutes. With a ready memory, keen penetration, barren fancy, vulgar manners, and infuriate passions, another indulged himself in the gibberish of a canting fanatic, and the ravings of an angry scold, before trembling criminals. With sagacity† enough to make the worse appear the better cause to superficial hearers, and with hardihood enough not to profess much concern for the bodies of men, or their souls, the third carried about him an air, sometimes of wanton dispatch, and sometimes of savage exultation‡, when he immolated hecatombs at the altar of public justice. Armed with " giant strength," and accustomed " to " use it like a giant," these protectors of our purses transferred to thievery that severity which the court of Areopagus employed only against cut-throats, and they did so, where judges were not bound by a *peculiar*, direct, and sa-

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* Claudian de Mallii Theod. Cons. l. 224.

† " οἰδ' ἀκροώμενοι
" Τῶν ἀντιλογιῶν, καὶ λογισμῶν, καὶ τροφῶν
" Ὑπερεμάνησαν, κἀνόμισαν σοφώτατον.,"

Aristoph. Ranæ line 786.

‡ " ὥσπερ τινὰ ἀρέτην ἔσαν τὸ μηδὲ ἐν ταῖς μιαιφονιαίς ὑπό τινος ἡττᾶσθαι."

Dio Cassius, Fragm. 137.

ered oath adapted to the *peculiar character of the tribunal*, and where offenders had not the chance, as among the Athenians, of a more favourable issue from appeals to *Thesmothetæ*, nor that privilege of going before trial into voluntary exile, which, on the first institution* of this court, had been granted to them by legislators, who "εἴθ' Ἥρωες ἦσαν, εἴτε θεοὶ, ἐκ ἐπέθεντο τοῖς ἀτυχήμασιν, "ἀλλ' ἀνθρωπίνως ἐπεκύφισαν, εἰς ὅσον εἶχε καλῶς, τὰς συμ- "φορὰς †."

If a Βῶμος Ελέε, like that at Athens, had been placed in the avenue to our English courts, these δικασπόλοι ἀνδρὲς would have differed from each other in their outward demeanour, and yet have remained equally guiltless of "bear- "ing the sword in vain." *Elaphocardius*, upon approaching the hallowed spot, might have paused for a second, winced under a slight stroke of rebuke from the monitor within, and quietly sneaked by on the other side. *Cardamoglyphus* would have wrung his hands, lifted up his eyes to Heaven, implored forgiveness to himself as a miserable sinner, and

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* "Originally the Areopagi took cognizance of all sorts of "homicides; but afterwards their jurisdiction was confined to "murders committed with premeditated design. A few ages "after the Areopagus, another tribunal, called Delphinium, was "erected to try those who confessed the homicide, but justified "it. Afterwards the Palladium was established, where they were "tried who committed an involuntary murder."

See Dagge, Notes, vol. iii.

The Athenians distinguished between involuntary homicide and homicide ἐκ προνόιας, and "if the murderer withdrew be- "fore conviction into banishment he was subjected to a total "forfeiture."

See Eden, p. 222.

† Vide Demosthen. Orat. advers. Aristocrat.

before sunset would have boasted of "not being as other "men are," regraters, sabbath-breakers, libertines, and, more especially, as that execrable criminal who stood before him at the bar. But the steps of *Cynopes* would not have been turned aside to the right hand or to the left; his eye would have darted upon the emblems of the altar with a glare of fierce disdain; he would negligently have swept the base of it with the skirts of his robe; he would have laughed inwardly at the qualms of one of his compeers, and scoffed without disguise at the mummeries of the other. Happily these arbiters of life and death are now no more; they have left an example* not very likely to be imitated by their venerable successors, and my hope is, that the mercy which they showed not to others in this world, may in another world be shown to them.

Sir Matthew Hale was too wise to be pedantic, and too honest to be artificial. Knowledge, reflection, and a lively sense of morality and religion had elevated his mind far above the petty gratifications which high office supplies to the weakness of vanity, and the restlessness of ambition. But I suspect that in order to sooth some unquiet misgivings, and some tender yearnings of his soul, he by frequent efforts of recollection summoned to his aid those maxims, which might lighten the burthen of his painful office as a judge. Hence, in his Contemplations, moral and divine, we read, "There must be duly considered the difference be- "tween a private person and a public person, whether min- "ister or magistrate; the former, namely the private per- "son, humility must teach him compassion, charitableness, "gentleness; but the latter being intrusted in a public min- "istration, doth *alterius vices agere;* his personal humility,

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* "Τοὺς πολίτας, ἐξ οὗ ὅ, τε Σίννις, καὶ ὁ Σκείρων, "καὶ ὁ Προκρούστης ἀπέθανεν, οὐδεὶς ἔτι ἀδικεῖ." Xenoph. Memorab. lib. ii. cap. 1. In the original the word is ξένους, for which I substitute πολίτας, in order to accommodate the passage to my purpose.

" as a private man, must teach him to be charitable, but " yet not to be remiss or unfaithful in the exercise of his " office*."

Doubtless for Hale† " when finding himself swayed to " mercy, to remember that there was a mercy likewise due " to the country," was " a branch and parcel of his oath;" and perhaps, as he was officially bound to administer laws which had been made by other men, and of which he might not himself entirely approve, he might often have been disposed to recal this sentiment, as a preservative against the suggestions of pity, and even of equity not quite reconciled to positive institutions. But *such a reader* as Hale was in the great volume of human life, and *such a believer* too in " *a judgment to come*" must have remembered *much more*. He must have *known* much more, from the frequent opportunities which in the course of his private studies and his public duties, had been afforded him, for observing what passed within the breasts of lawgivers, judges, prosecutors, culprits, and spectators‡. He must have known that profound writers, (I mean those who lived before Butler) " upon the capacities and relations in which men " ought not to be entirely deaf to the calls of affection,"

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* See Hale on Humility, p. 208.

† See Hale's words quoted in a note of Johnson's on Shakespeare's Measure for Measure, Act ii. Scene 7.

‡ There was a very humane maxim in the Civil Law of the Romans, " Favorabiliores rei potius quam actoris habentur." The natural reluctance of men to take away the lives of their fellow-creatures judicially is stated very luminously in the problems ascribed to Aristotle: " "Εκαστος ἡμῶν μᾶλλον ἂν προέλοι- " το τὲ ἀδικὲντος ἀποψηφίσαθαι ὡς οὐκ ἀδικεῖ, ἢ τὲ μὴ ἀδι- " κὲντος καταψηφίσαθαι, ὡς αδικεῖ· οἷον ἔι τις φεύγει δου- " λείας, ἢ ἀνδροφονίας. τὲτων γὰρ ἐκάστε ὄντων, ἃ κατηγορεῖ " αὐτῶν, μᾶλλον ἂν ἀποψηφίσασθαι ἐλώμεθα, ἢ μὴ ὄντων " καταψηφίσασθαι." Problemat. sect. 29.

speak very doubtfully on the propriety of excepting even the judicial character, that "the proneness of mankind to "excuse insensibility or rigour makes it necessary for ge- "neral rules and exhortations to be on the other side," and that in the entire absence of compassion even from the mind of a judge, the *practical* consequence might be, not that he would be guided by "the calm dictates of reason," which alone could compensate for such absence, but that he would ultimately fall under the influence of some less amiable, and less useful affection *. He must have known that "however pity, as a passive impression, may be weak- "ened, while, as a principle of action, it is strengthened "by exercise," in the ordinary course of human affairs, yet, even as a passive impression, it must in every situation be weakened by total *disuse*, and so weakened as to be eventually severed from the practical principle of benevolence, which principle itself depends for its first movements upon our passive impressions, which being always accompanied by such impressions, more or less forcible, and more or less perceptible, is only strengthened by habitual exertion, and which must, together with the impressions themselves, be gradually impaired by long-continued inaction †. He must have known that the remark which he himself made on trials for rape, must sometimes have been applicable to other cases, "where the heinousness of the offence may transport "the judge as well as the jury with so much indignation "that they are overhastily carried to the conviction of the "person accused thereof, by the confident testimony of "sometimes false and malicious witnesses ‡." He must have known that writers on penal laws have by their subtleties encouraged the rash decisions of passion, when they dictated this inhuman maxim: "In atrocissimis, leviores conjecturæ "sufficiunt, et licet judici jura transgredi §." He must have known, that if Judges are accustomed to express the warm

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* See Butler's Sermons, 5th and 6th. † See Butler's Analogy, ch. 6. ‡ Hale as quoted by Blackstone, book iv. chap. 15. § Beccaria, chap. 13.

and honest indignation they feel against flagitious crimes, they may with equal propriety permit and acknowledge themselves to be susceptible of pity for inconsiderate youth, for grinding penury, for sudden anger, and all other extenuations which may accompany the criminal breach of wholesome statutes. He must have known, that in well-informed and well-regulated minds, neither indignation nor pity impedes the clear discernment of proofs, or the adaptation of judicial rules to well-attested facts; that in the ordinary course of human affairs they operate, not during the trial, but after the sentence, and that their proper effect is, not to expose the accused party to unmerited conviction, nor to protect him from it, if it be merited, but to produce the plenary infliction of punishment upon the very wicked, and the partial relaxation of it to the very unfortunate. He must have known that the plea of imperfection, as inseparable from all human contrivances for human happiness, is subject to many limitations. He must have known, that however in compliance with the captiousness of prejudice, or the authority of usage, political restraints may be permitted to continue beyond the occasions from which they took their rise, jurisprudence is not entitled to the same discretionary latitude, or the same arbitrary decision, which are granted in politics; that in very severe punishments the visible fairness and visible simplicity of the laws which ordain them increase their efficacy; that they generally fall with the utmost weight upon the uneducated and the friendless; that they go far beyond restrictions upon personal freedom, or diminutions of temporal advantage, that they involve the very greatest of physical evils to which humanity is subject in the extinction of life itself.

Hale must have known that life is a thing *sui generis*, that man alone is endowed with power to calculate the importance of life in reference to every actual and probable, every present and future, capacity of enjoyment; that even the merit of resigning life consists in the voluntary sacrifice of what we conceive to be the choicest blessing; that to our experience, our reason, and our instinctive sentiments, the act of taking away life unjustly, appears the most heinous

outrage man can offer to man; that such injustice against life is possible at least in the deliberate ordinances of states, as well as the sudden resolves of individuals; that the indiscriminate or inconsiderate destruction of life for the purpose of punishment, forms one of the leading distinctions not only between a barbarous and a civilized people, but between a tyrannous and an equitable government; that all questions concerning life have inherent and specific properties, which are in some respects incommunicable to any other questions; that we can remove or mitigate bodily pain as well as inflict it; that we can decree the restoration as well as the forfeiture of liberty and property, but that we cannot give life at all; that upon the discovery of circumstances favourable to the sufferer, we cannot restore life when once taken away *, and therefore that the utmost caution becomes us, as sensitive, as social, and as religious beings, before we authoritatively determine the conditions upon which a fellow-creature is to be subjected to a violent and ignominious death. He must have known that temporary alarms have often given rise to penal laws, the rigour of which has not been relaxed, when the real or the seeming danger had passed away. He must have known that even in the solemn process of legislation the passions of men are sometimes more than a match for their reason, and that sudden fear oversteps the boundaries which discretion, at once calm and vigilant, would prescribe. He must have known that long usage produces an unwillingness to relax and even review, or I should rather say an alacrity in enforcing, a stubbornness in retaining, a proud and captious jealousy in vindicating those penalties which long trial shows to have been inefficacious for the prevention of offences. He must have known that remissness or error more frequently occa-

* "Τῶν μὲν ἀξιολόγων ἁμαρτημάτων, μεγάλαι καὶ αἱ "κολάσεις εἰσίν. ὥστε ἀδίκως καταψηφισαμένοις καὶ μὴ γνῶσιν, "ὐυκ ἔστιν ἐπανορθῶσθαι καιρὸν λαβόντας." Aristot. Problem. sect. 29.

sions feeble laws, than *deliberate lenity*, and that greater evils arise to society from the negligent or unsteady administration, than from the total want of those laws which are rigorous.

If, in the nature of things, as Andronicus tells us*, it is impossible "τὰ κατὰ μέρος πάντα περιβλέψαι ἀόριστα "ὄντα"—if the lawgiver is obliged "τὸ ἐπὶ πλεῖον περιλαμβάνειν," and if the laws themselves are compelled "καθόλα διορίζεσθαι," or as Aristotle says, "περὶ ἐνίων ἐκ "οἷόντε ὀρθῶς εἰπεῖν καθόλα †," Hale must have known that for *these very reasons* the general sanctions of law should be in some degree accommodated to the incalculable differences of demerit in particular actions, and that *in order* to become so, they should partake rather of mildness than severity. He must have known that "the conceptions of men on the "gradations of criminality are greatly affected by the pro-"miscuous application of punishments;" that by "withhold-"ing distinctions in the nature of those punishments, we "inure their minds to confound the higher and the lower "measures of guilt;" that "the law of nature, where there is "no convention to the contrary, limits the right of the magis-"trate to the use of such measures as are necessary to the "defence of the innocent, or the prevention of wrongs; that "all severities employed *beyond* those limits" are inconsistent with the fundamental conditions implied at least in that very convention, into "which men enter when societies are "formed;" and that, "*after* the existence of express conven-"tions, the magistrate can have no right to inflict more "punishments than are necessary to obtain the purpose "for which the parties contracted, that is, more than are "necessary to restrain crimes, and keep the peace of so-"ciety;" that a just gradation of punishment has for its object not "to let liberty pluck justice by the nose," but

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* Vid. Andronic. Rhod. cap. xvi. lib. 5.

† Aristotel. Ethic. lib. v. cap. 2.

to restrain justice from "bruising to death," where by "cutting keenly" it can "give fear to use and liberty *," not to "let the guilty escape, but to make the innocent "*eventually* more safe" by regulations in which the purposes of lenity and expediency are alike consulted, and of which the guilty and the innocent would alike approve, if the grounds and tendencies of such regulations were proposed to their calm and unbiassed reason; and that "although the principle of defence strictly applied would "justify that punishment, whatsoever it may be, which is "necessary to repress a crime, yet, in *some* instances, prudence as well as humanity would reject this authority, "and recoil at the application of a punishment against "which human nature would revolt *more than against the* "*crime itself* †." Hale must have known some few instances of legislative reasoning not very dissimilar to the logic of those ecclesiastical disciplinarians, who "because the "church of Rome was constructively guilty of idolatry "in the doctrine of transubstantiation and the practice "grounded upon it, and because under the Jewish law pro-"phets who persuaded to idolatry were to be slain," recommended by implication the same wholesome severities to Christians; and surely in opposition to arguments so futile, applied to purposes so terrible, he must have thought with Bishop Taylor, "here we must deliberate, for it is con-"cerning the *lives* of men ‡."

Hale must have known, that in cases of very aggravated thievery, the injured party puts a *much* higher value upon his *own* existence than upon his own property—He must have known, that the claims of individuals to redress for a particular wrong, and of society to protection from a repetition of it, rest upon general principles

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* Shakespeare.

† See Ferguson's Principles of Moral and Political Science, Part II. Chap. iii. Sect. 10, and Chap. iv. Sect. 3.

‡ Liberty of Prophesying, Sect. 20.

of justice, in which every member of the community, yet innocent, has a contingent, as every guilty one has an immediate interest, and which forbid us to inflict the heavier punishment, where the lighter would *upon the whole* be equally efficacious for the commonweal—He must have known, that our just and habitual indignation against a general class of actions * is easily set in motion, and suddenly

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* I have observed that in trials for capital offences the counsel for the accusation is permitted to make an opening speech, and that he often introduces general and declamatory matter, which powerfully affects the minds of the Jury, and to which no reply can according to the practise of the Court be made by the counsel for the prisoner. Upon these occasions I have often recollected what Cicero says in defence of his client Cælius; and though the accusers of Cælius adverted only to subjects of licentiousness, the principle upon which Cicero argues may be applied to all general observations upon the nature of crimes, when they have a tendency to mislead and inflame the Court against an individual. "Ut "tibi reum neminem, sed vitia proponas, res tamen ipsa et co- "piose et graviter accusari potest: sed vestræ sapientiæ est, ju- "dices, non abduci ab reo: nec quos aculeos habeat severitas, "gravitasque vestra, cum eos accusator erexerit in rem, in vitia, "in mores, in tempora, emittere in hominem et in reum." (Orat. pro M. Cælio, Paragr. 29.) From this mischievous display of talent there is a most powerful dissuasive in Hale's remarks "concerning the gifts of elocution." Much as I have been delighted and interested, by the representations which Plato and Xenophon have given of their illustrious contemporary Socrates, I confess myself to have been equally delighted, and more inteterested by Hale's "Account of the good steward," in which the above-mentioned remarks may be found. "It is the very pic- "ture," as says the editor, "wherein representing the good stew- "ard passing his account, it was impossible for him not to give "a lively representation of himself;" and rarely do we meet with an instance in which any man speaks so unreservedly and so largely

runs into excess against the persons who are accused of committing them; that it warps the operation of our judgment in balancing the probabilities of circumstantial evidence, and calculating the niceties of circumstantial extenuations; that it pushes a part even of our benevolent affections into a sort of violence quite inconsistent with the proper *duties* of benevolence itself, and that to our affrighted imaginations and our misguided conscience it palliates and even recommends cruel retaliation*, by associating the ef-

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of his own opinions and actions with so much propriety. "His "words are significant, perspicuous, manly, *vox non ex ore, sed* "*pectore emissa.*" Upon every account of matter, style, and spirit, it is a work which deserves to be read every year by every "Light of the church, and every sage of the law" in Christendom.

* Such was the just, but *excessive*, indignation of the Romans "qui dedi Decemviros æquum censebant, vivosque igni eos "crematuros minitabantur:" but the legati well observed to them, "iræ vestræ magis ignoscendum quam indulgendum est, quippe "qui *crudelitatis odio* in crudelitatem ruitis." (Liv. lib. iii. sect. 53.) Such, too, was the language of Heraclea to the Syracusans, when actuated by a just but undistinguishing rage against the execrable oppression of Hieronymus, they had obtained a decree for the extirpation of his whole family—"omissis pro se precibus, "puellis ut saltem parcerent, orare institit, à quâ ætate etiam "hostes iratos abstinere, ne *tyrannos ulsciscendo*, quæ odissent "scelera, ipsi *imitarentur*." (Livy, lib. xxiv. sect. 26.) Possible it is, that in seasons of sudden and tumultuous alarm, from the prevalence of crimes affecting the interests of private life, well-meaning legislators may now and then have been impelled to the same severities, which in the instances above-mentioned are recorded of blind and infuriate multitudes.

The aversion of George II. to capital executions is well known, and to the honour of the reigning sovereign be it spoken, his prerogative has for many years past been frequently exercised

fects of it with our regard to public utility, and the motives to it with our sincere and virtuous hatred of cruelty itself—He must have known, that man is often the creature of involuntary circumstances, which more or less usurp an undue control over his voluntary actions, and which, therefore, bring his *weakness* as well as his wickedness, under the consideration not of pity only, but of sound and impartial wisdom—He must have known, that under the influence of that moral sense to which all legislators and all judges appeal, upon the presumption that however enfeebled, it is not wholly *extinguished*, even culprits form *some* vague notions of proportion* between offence and punishment; that the errors of *such* men are more to be dreaded, because they are more immediately connected with *practice;* that from the suggestions of self-delusion they will be more *exposed* to error by the continuance of severities, which wiser men than themselves discern and lament; that their own remaining respect for justice will be weakened more and more by visible injustice in those laws which they have themselves violated, and which even others who obey them are unable to approve: that to their minds, labour, confinement, infamy, banishment, may appear more *formidable*, as

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in favour of condemned criminals, and without any *known* danger to the authority of the laws, or the security of the public.

* We have proportion in view, when in common language we say that a man suffered the punishment *due* to his crime. The Aristotelian school used peculiar terms for justice in the distribution of rewards and punishments. "Καλεῖται δικαιοπράγημα μὲν πᾶσα πρᾶξις δίκαια, κἄντε ἀδικίας ἔκτισις ᾖ, κἄντε ἀρετῆς ανταπόδοσις· δικαίωμα δὲ ἰδίως, ἡ τῆς ἀδικίας τιμωρία." (Andronic. Rhod. Eth. Nicomach. Paraphr. lib. v. cap. 11.) In conformity to this distinction we read, "Ὁ μὲν ἀδικῶν κολαζόμενος ἀκυρίως δικαιοῦται· ὁ δὲ ἀδικούμενος ἐκδικούμενος, ἐκυρίως δικαιοῦται." Id. cap. 13.

well as more *reasonable* penalties than the infliction of death; that even death itself, when contemplated at a distance, and when *alone* it can operate as a restraint, may be considered as a release* from hunger and thirst, from cold and misery, from cheerless prisons and galling fetters, from the frowns of the prosperous, and the menaces of the powerful; that from the prospect of death, while it continues to be painful, they may endeavour to find some relief by accustoming themselves to sullen indifference, or gay defiance; and that even their fears, if they degenerate into cowardice, may not lead to reformation, but induce them to substitute a mischievous cunning for that boldness, which is not always incapable of a temporary alliance with virtue. Hale must have known that the *appearance* of heroism is captivating to common minds, and that it is supposed to consist, not in the patient endurance of long-continued evils, be they chains, or solitude, or dungeons, but in that firmness of soul which bears up against *one* vast and mighty danger, from which nature usually shrinks. He must have known, that by the perversion of that constitutional courage which animates better men to better things, a criminal might be

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* In an extract from the Danish ritual, given us by Dr. Nicholls in the second volume of his Commentary on the Common Prayer, it is directed that "when a malefactor is to be led to the "place of execution, he be exhorted heartily to rejoice that every "step he makes brings him nearer to his liberty, where he shall "see no sorrow, no fetters, no prisons any more." But these very circumstances, which condole the dying malefactor, may, under another aspect, embolden the offender, when *before* the commission of a crime, he looks upon the punishment of it as deliverance from "sorrow, fetters, and prisons." We naturally wish for some alleviation of impending evil, and the mischief is, that we find encouragement to wickedness in that which ought to be only a solace to grief. Legislators ought to take into their calculations this well-known, and most pernicious propensity of the human mind.

led to shake off the apprehension of death as a weakness disgraceful to his nature, and by calling in the aid of pride and rage, to fortify himself in a secret or open contempt of the last severity which human authority, or human vengeance can employ. He must have known that when fear ceases, obduracy begins, and gradually prepares men for perpetrating the greatest crimes with the least compunction. Hale must have known farther, that "Authority, tho' it "may err like others, hath a kind of medicine in itself, "that skins the vice o' the top." He must have known, that in all ages and in all countries "Man, proud man, Drest "in a little brief authority," is sometimes "most ignorant "of what he is most assured;" and that, measuring his duty by his power, he will now and then "play such fantastic "tricks before high heaven, as make the angels weep." He must have believed,

"No ceremony, that to great ones 'longs,
"Not the King's crown, nor the deputed sword,
"The marshal's truncheon, nor the judge's robe,
"Becomes them with one half so good a grace
"As mercy does *."

Finally, he must have observed, and he must have felt, that from the unseen, unsuspected, unalterable influence of moral causes upon a being so short-sighted, and so imperfect as man, a very slight difference in external situation may ultimately, though imperceptibly, lead to most important differences in conduct, and that if he had been himself placed and tempted, as many culprits were, he might himself "like them," have sometimes "slipped."

Under these awful impressions, the wise, humane, and pious Hale must often have had occasion to exclaim, as Boerhaave was said to do, when a criminal was condemned to die †, "May not this man be better than I? If

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* Measure for Measure.

† "A worthy prelate of the church of England once said upon "seeing a criminal led to execution, 'There goes my wicked

" otherwise, the praise is due not to me, but the grace of " God *."

Such, dear Sir, are the fixed and serious sentiments of one, who for many years has been a very attentive observer of judicial proceedings; of one, who is no stranger to the pleas usually alleged for the rigour of our laws, or to the effects *really* produced by it; of one, who has often thought it " the charitable duty of his Order," to prepare malefactors for eternity by lessons of resignation and repentance; of one, who while he soothed them by consolation when they were about to taste " the bitterness of death," rarely failed to explore the deepest recesses of their hearts; of one, who upon a view of *all* circumstances has been yet *more* rarely satisfied with that sentence which doomed his fellow-creatures " to die"— " to go they knew not whither" —to be sent to their last solemn account " with all their " imperfections on their head," when from the scantiness of their education, the untowardness of their habits, the

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" self.' Considering the vices to which the frailty of human " nature exposes whole families of every rank and class in life, it " becomes us, whenever we see a fellow-creature led to public in- " famy and pain, to add further, ' There goes my unhappy father, " my unhappy brother, or my unhappy son." I found the foregoing passage in p. 17 of an Inquiry into the Effects of Public Punishments upon Criminals and Society, published in Philadelphia, 1787. I differ from the enlightened Author in his objections to the publicity of capital punishments, though I believe that in some few cases privacy in the infliction of other punishments, and even uncertainty as to their duration, might increase their effect. But the experiment should be made with caution. Who the prelate was I cannot determine; but he understood human nature, and what is better, he has exemplified the cœlestial rule " γνῶθι σεαυτόν."

* See Life of Boerhaave, p. 56. Part of the words are quoted by Johnson in No. 114 of the Rambler, where the reader will find many just and serious reflections on the rigour of our penal laws.

inquietude of their spirits, and the shortened span of their existence, little or no "reckoning could be made." Oh! horrible! most horrible!

Doubtless there are subjects upon which the maxim "sua cuique in arte credendum est," may be admitted to a great extent. But the general principles of jurisprudence, and the practical effects of those laws which inflict death, are within the reach of every man who has formed habits of reflection, and who has been blest with the advantages of a liberal education. But if professional men should exclaim as they are wont to do, contemptuously, "tractent "fabrilia fabri," I should remind them, that I am speaking of those by whom laws are made, rather than those by whom they are administered, and that for my opinion upon this topic I can find protection in the wise and humane observations of a well-known and justly celebrated writer. "The crimes "of such a man as Barnardine, careless, reckless, and fear-"less of what's past, present, or to come, may perhaps have "made him unfit to live; but he is certainly unfit to die. The "safety of the community and the preservation of individu-"als may call for his execution; but the bosom of humanity "will heave in agony at the idea, the eye of religion will "turn with horror from the spectacle.

"Suppose the sufferer on the contrary to have been a "valuable member of society, and to have erred only from "some momentary impulse of our imperfect nature, one "who in the recollection of reason hath found repentance; "who resigns with cheerfulness that life which is become "a forfeiture to the law, and looks up in confidence to "Heaven for that forgiveness which is not to be found on "earth. The last footsteps of such a man are watered with "the tears of his fellow-citizens, and we hear from the "mouth of every spectator,

"Yes, I do think, that you might pardon him,
"And neither heaven nor man grieve at the mercy*."

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* Eden's Principles of Penal Law, cap. iii.

At such a moment the most flinty-hearted man would be ashamed to insist upon the topics which were recommended to a mere pleader: "Locus inducetur ille per quem hortandi judices erunt, ut veterem famam hominis nihil ad rem putent pertinere, nam eum ante celasse, nunc manifesto teneri; quare non oportere hanc rem ex superiori vita specari, sed superiorem vitam ex hac re improbari, et aut potestatem ante peccandi non fuisse, aut causam*."

For my general dissatisfaction with the penal law of England I have the authority of a yet greater writer, who occasionally found room to remark some particulars which seemed to want revision and amendment, and which had chiefly arisen from those causes, to which in part I have myself applied them. It is impossible to read his masterly chapter on the national crimes and their punishments, without perceiving that he looked with no favourable eye on the frequency of our capital punishments, "upon too scrupulous an adherence to some rules of the ancient common laws where the reasons have ceased on which those rules were founded; upon not repealing such of the old penal laws as are obsolete or absurd; and upon too little care and attention in framing new ones." "It is a kind of quackery," he says, "in government, and argues a want of skill to apply the same universal remedy, the *ultimum supplicium* to every case of difficulty. It is, it must be owned, much easier to extirpate than to amend mankind; yet that magistrate must be esteemed both a weak and a cruel surgeon who cuts off every limb which through indolence or ignorance he will not attempt to cure†." The language of Blackstone is, indeed, as it ought to be, wary and temperate. But his real opinions and his real wishes are sufficiently intelligible; and they who for their own instruction have read the conclusion of this chapter may be content to read it again, when produced, as it

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* Cicero de Inventione, lib. II. vol. i. p. 77. Ed. Gruter.

† Blackstone, vol. iv. cap. 1.

now is, for my own vindication. " Robbers," says he, " in " England have a hope of transportation, which seldom ex- " tends to murderers. This has the same effect here as in " China, in preventing frequent assassination and slaughter."

" Yet though in this instance we may glory in the wis- " dom of the English law, we shall find it more difficult " to justify the frequency of capital punishment to be found " therein, inflicted (perhaps inattentively) by a multitude " of successive indefensible statutes upon crimes very dif- " ferent in their natures. It is a melancholy truth that " among the variety of actions which men are daily liable " to commit, no less than an hundred and sixty have been " declared by act of Parliament to be felonies without be- " nefit of clergy, or in other words to be worthy of instant " death. So dreadful a list instead of diminishing increases " the number of offenders. The injured through compassion " will often forbear to prosecute: juries through compassion " will sometimes forget their oaths, and either acquit the " guilty or mitigate the nature of the offence; and judges " through compassion will respite one half of the convicts " and recommend them to royal mercy. Among so many " chances of escaping, the needy and hardened offender " overlooks the multitude that suffer; he boldly engages in " some desperate attempt to relieve his wants or supply his " vices; and if unexpectedly the hand of justice overtakes " him he deems himself peculiarly unfortunate in falling at " last a sacrifice to those laws which long impunity had " taught him to contemn *."

The acute and indignant author of a Fragment on Government will, I think, be ready to allow that in the foregoing passage Blackstone has sustained the part not merely of " an expositor who is to shew what the legislator and " his under workman the Judge had done already," but of " a censor, to whom it belongs to suggest what the legislator

* Blackstone, book iv. cap. 1.

" ought to do in future *." So strong, however, is the reasoning, and so just are the views of the writer here mentioned, that I think myself bound to introduce what he has written upon the propriety and the usefulness of revising our laws. I shall take the substance of his observations, but omit some sharp strictures which are interwoven with them.

" Those who duly consider upon what slight and tri-
" vial † circumstances even in the happiest times the adop-
" tion or rejection of a law so often turns; circumstances with
" which the utility of it has no imaginable connection—
" those who consider the desolate and abject state of the
" human intellect, during the periods in which so great a
" part of the still subsisting mass of institutions had their
" birth—those who consider the backwardness there is in
" most men, unless when spurred by personal interests or
" resentments, to run a tilt against the colossus of autho-
" rity—those, I say, who give these considerations their full
" weight, will not be zealous to terrify men from setting up
" what is now 'private judgement,' against what once was
" 'public:' nor to thunder down the harsh epithet of 'ar-
" 'rogance' on those, who with whatever success are oc-
" cupied in bringing rude establishments to the test of po-
" lished reason. They will rather do what they can to
" cherish a disposition at once so useful and rare ‡, which

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* Preface, p. 10.

† This remark may sometimes be applied to the *interpretation* of penal laws. See the case of a prisoner tried by Hale at Cambridge for burglary, when all doubts upon the nature of his crime were removed by the trivial accident of some bricks having fallen down the chimney through which he descended into the house. " Such deviations," says Mr. Eden, " of sound sense " into sophistry, are too often the effect of legal reasoning." Page 326.

‡ " When Beccaria came he was received by the intelligent " as an angel from heaven would be by the faithful. He may

" is so little connected with the causes that make popular " discontentment dangerous, and which finds so little ali- " ment in those propensities which govern the multitude of " men. They will acknowledge that if there be some in- " stitutions which it is 'arrogance' to attack, there may be " others which it is effrontery to defend. Tourreil has de- " fended torture: torture established by the 'public judge- " 'ment' of so many enlightened nations. Beccaria has " condemned it. Of those two whose lot among men would " one choose rather—the apologist's or the censor's?"

They who look to things rather than men, to reason than to names, may derive, as I have done, the most valuable information, and feel, as I have done, the strongest conviction from the works of the writer whose opinions I have just now produced. He holds a distinguished place in that small number of sages who will " echo to the senti- " ments of Beccaria from the bottom of their hearts, and " co-operate with him in giving effect to the voice, which " if it be the voice of one philosopher only might be too " weak to be heard amidst the clamours of a multitude " blindly influenced by custom*." But the progress of civilization, science, and sound religion has prepared even the multitude for such punishments as are less offensive than those which are now inflicted, to the sense of humanity and of justice. Enlightened men, as we have seen, plead for some reform, and the necessity of that reform was discerned long ago by a celebrated writer, under the shelter of whose name I will conclude these remarks. Lord Coke, in his Epilogue to his third Institute, which treats of the Crown Law, after observing that frequent punishment does

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" be stiled the father of *censorial jurisprudence*. Montesquieu's " was a work of the mixed kind. Before Montesquieu all was " unmixed barbarism. Grotius and Puffendorf were to censorial " jurisprudence what the schoolmen were to natural philosophy." (Preface, page xix. to Fragment on Government.)

* See Beccaria, chap. xxviii.

not prevent crimes, says, "What a lamentable case it is "that so many Christian men and women should be strang- "led on that *cursed tree of the gallows;* insomuch as if in "a large field a man might see together all the Christians "that but in one year come to that untimely and ignomin- "ious death, if there were any spark of grace or charity "in him, it would make his heart to bleed for pity and "compassion."

His Lordship then proceeds to shew that the method of preventing crimes is "first, by training up youth in the "principles of religion and habits of industry. Secondly "in the execution of good laws. Thirdly in the granting "pardons very rarely, and upon good reasons." He then concludes "that the consideration of this prevention were "worthy of the wisdom of Parliament, and in the mean "time expert and wise men to make preparation for the "same, ut benedicat eis dominus. Blessed shall he be that "layeth the first stone of the building; more blessed that "proceeds in it; most of all that finisheth it to the glory "of God, and the honour of our king and nation *."

Long after I had written thus far, Sir Samuel Romilly, whose name I never mention without veneration, moved in the House of Commons for the repeal of the law against private stealing from the person. He supported the motion with his usual accuracy of information, and acuteness of reasoning. The bill has passed both houses of Parliament, but with amendments in which the mover probably acqui- esced upon the principle of surrendering a part, lest the whole should be wrested from him. The objections I should have urged against those amendments seemed to me not unimportant, and therefore I shall proceed to state them temperately but unreservedly, and to intermix with them, copiously, such general reflections as they may incidentally suggest to my mind.

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* See Introduction to first edition of Dagge's Considerations of Criminal Law, p. 74, vol. iii.

Acts of legislation are too momentous in their consequences to be debased by ostentatious courtesy, or wanton rudeness, to any members, or any classes of the community. In the discussion of political topics men of observation see only folly, or affectation, or flattery, in the profession of separating measures from men; and surely in the more solemn process of enacting penal laws, the framers of them ought to keep in view the possible imperfections of those who are to administer, as well as the actual malignity of those who may violate them. Corruption, I grant, would, in English judges, be a prodigy quite as rare as parricide is said to have been among the old Greeks. To none of those venerable men, who now adorn our courts, deliberate cruelty can be imputed in trials for capital crimes, and if it were not invidious to particularise individuals, I should be happy to pay the tribute of my praise to the great sagacity and great lenity of some persons whom I could point out by name. But I mean to give no offence, and I hope that none will be taken, when I say, that upon questions, by the decision of which the life or the liberty of man is to be forfeited, it is more safe and more becoming for legislators to trust in the energy of the laws themselves, than to repose very large confidence in the discretion of any one human being.

Let me not be accused of singularity when I express my concern that in the administration of public justice too much is already granted to the persons who administer it. "By the indulgence of Judges, not by the provisions "of law, a prisoner indicted for felony is now allowed coun-"cil to stand by him at the bar, and instruct him what "questions to ask, or even to ask questions for him in matters "of fact*." But one Judge may refuse what another would grant, and the consequence of such refusal may be the omission of questions, which if well proposed and well answered, might lead to the acquittal of the accused.

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* See Blackstone, book iv. cap. 27.

Hence with all his real or all his supposed spirit of optimism, Blackstone calls this "a matter of too great import-"ance to be left to the pleasure of any Judge, and worthy "of the interposition of the legislature." He thinks that interposition necessary, though he was sensible that in the absence of an advocate to assist a prisoner, the Judge is generally presumed to sustain the office of a council.

In regard to cases not wholly unconnected with the views of a ministry, or the spirit of a court, it would be unfair to prejudge any body of men, especially as our constitution may be supposed to invest us with the right of arraigning seriously and discussing argumentatively any real impropriety in their conduct when such cases occur. But in transactions between subject and subject the history of our country, and indeed my own immediate observation would induce me to give a confidence nearly unlimited, where the collective wisdom of the twelve judges is employed in ascertaining the import of a penal statute; and well does it behove every Englishman to remember that when the disproportion of numbers between measures of lenity and measures of rigour is not very wide, this circumstance, though it may not produce direct acquittal, as an equality* of votes formerly did before the tribunal of Areopagus, generally protects a culprit from ignominious execution. Yet I have often wished, not perhaps for the abolition, but the limitation of that discretion, which is now exercised by single judges and even single courts, in decreeing the pillory or transportation, and in fixing the quantity of a fine, or the duration of imprisonment. In truth I have never heard a satisfactory reason why the law could not be so well understood by twelve honest jurymen, or so well interpreted to them as to qualify them for proportioning the punishment, when they have pronounced a verdict upon the crime.

"Where an established penalty," says Blackstone, "is

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* Euripid. Elec. verse 1269. Æschyl. Eumenid. verse 744, and Aristotel. Problem, sect. 29.

" annexed to crimes, the criminals read their certain con-
" sequence, in that law which ought to be the unvaried rule,
" as it is the inflexible judge of their actions. The discre-
" tionary fines, and discretionary length of imprisonment
" which our courts are enabled to impose, may seem an
" *exception* to this rule. But the general nature of the pun-
" ishment, viz. by fine or imprisonment, is in these cases
" fixed and determinate, though the duration and quantity
" of each must frequently vary from the aggravations or
" otherwise of the offence, the quality and condition of the
" parties, and from innumerable other circumstances *."

It affords but little satisfaction, I confess, to my mind to be told that the law has fixed the *nature* of the punishment, when there may be many differences in the *degrees* of it, and when the choice of those degrees is to be left to any one man. Laws we may suppose in some countries so to fix by a general term the *nature* of punishment for some offences as to make it amount to death. But shall it be left to the Judge only to determine whether that death should be inflicted by the rope, or the axe, the racking wheel, or the slowly consuming fire? The English Laws denounce imprisonment and transportation. But is it not a question of great moment to delinquents, and to the community, whether the imprisonment be for one or two or five years, and whether transportation be to continue for seven, or fourteen years, or for life? What, I must ask, can in any offence be the circumstances which a Jury may not understand quite as well as a Judge? That the quantity of particular fines neither ought to be, nor indeed can be ascertained by any invariable law; that the current value of money, and the greater or the less wealth of the delinquent will introduce material differences; that the Bill of Rights has declared all excessive fines unfit to be imposed, and all unusual punishments unfit to be inflicted, are facts quite as intelligible, and restraints quite as powerful to juries as to Judges, and surely

* See Blackstone, book iv. cap. 29.

upon all occasions with the assistance of the Judges, jurymen may give proper effect to the laws in fixing the quantity of fines and the term of imprisonment or transportation. Without any invidious retrospect to the decisions of the Star Chamber against Burton, Pym, and Bastwick, or to some unprecedented proceedings in the reign of James II. intelligent men may in later times meet with strong reasons to lament that the adjudication of fine or imprisonment in criminal cases should be left exclusively with the Judges. It is the punishment, not the mere trial, which deters offenders, and secures the community; and wheresoever such punishment is to be inflicted, I should *mutatis mutandis* apply the observation of Sir Matthew Hale upon capital punishments. "It were a most unhappy case for "the Judge himself if the prisoner's fate depended upon his "direction" in the quantum of the punishment, "unhappy "also for the prisoner." If the Judge's opinion alone is to fix the punishment, the trial by Jury is far less useful than it ought to be in a country which boasts of such trial as the great palladium of its social rights, and which has long found in it sufficient protection for the safety of unoffending individuals and the peace of the community*.

Every Judge, be it said with great reverence for his office, is a frail individual, and whatsoever may be his wisdom or his integrity, my observation upon human nature would never induce me to invest him solely with the power of choosing between the milder and heavier punishment "of "the same nature." "More, in his Utopia, has declared "himself freely and fully against putting thieves to death. "And in the same charitable and reasonable way of think-"ing Erasmus agreed with him†." "But he was a notable "tyrant," said old Luther indignantly and justly. "He "was one of the bitterest enemies," says Burnet, "of the "new preachers, not without great cruelty when he came

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* See Blackstone, book iv. chap. 27.

† See Jortin's Life of Erasmus, p. 174.

" into power, though he was otherwise a very good natured " man;" and though in the opinion of Dr. Jortin " he had " once been free from that bigotry which grew upon him " afterwards in life." Yes, the philosophy, the sagacity, the piety, the benevolence of More did not preserve him from the reigning prejudices of his day against the crime of heresy; and they who will consult Mr. Lyson's excellent work on the environs of London, will be led to many serious reflections upon human infirmity, when they read the wanton cruelties which in More's presence, or even by his own hand, were exercised against heretics at a tree which he employed for this very purpose in his garden at Hammersmith. For his holy, but barbarous zeal, he could easily find pretexts, such as disgust and shock us, when produced by other apologists for rigour upon other occasions. Thus he writes in a letter to Erasmus, " Quod in Epitaphio pro- " fiteor me fuisse molestum, hoc ambitiose feci. Nam om- " nino sic illud hominum genus odi, ut illis, nisi resipiscant, " tam invisus esse velim, quàm qui maximè, quippe quos " indies magis ac magis experior tales, ut *mundo ab illis ve-* " *hementer metuam* *."

Who would dare to dispute the erudition, the integrity, or the wisdom of Sir Matthew Hale? Who can read with indifference the reasons which, with his usual modesty and sincerity, he assigns for declining the judicial office, and in which he represents himself as having " too much pity, " clemency, and tenderness in cases of life, which may prove " an unserviceable temper for bustling†?"

" Mitis precibus, pietatis abundans,
" Pœnæ parcus erat‡."

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* See Life of Erasmus, p. 190.

† See page xi. of Mr. Hargrave's interesting Preface to vol. I. of a Collection of Tracts relative to the Law of England, from MSS. first " edited" by him in 1787.

‡ Claudian de IV. Cons. Honor. l. 113.

Yet so far did he share in the credulity of his contemporaries about witchcraft, that in the Suffolk Sessions of 1664 he not only condemned two widows of Leystoff, but suffered judgment to be executed upon them; and even the learned Sir Thomas Brown, who wrote against vulgar errors, is said upon this occasion to "have declared himself in "court to be clearly of opinion, that the fits of the pa-"tients were natural, but heightened by the Devil co-ope-"rating with the malice of the witches, and to have con-"firmed that opinion by a similar case in Denmark, and "so far influenced the Jury that the two women were "hanged*."

I know not that Judge Powel was a weak, or a hard-hearted man. But I do know that in the Augustan age of English literature and science, when our country was adorned by a Newton, a Halley, a Swift, a Clarke, and an Addison, this Judge in 1712 condemned Jane Wenham at Hertford, who in consequence perhaps of a controversy that arose upon her case, rather than from any interposition of Powel, was not executed; and that four years afterwards he at Huntingdon condemned for the same crime Mary Hickes and her daughter Elizabeth, an infant of eleven years old, who were executed on Saturday the seventeenth of July, 1716. At the beginning of the same century, of which English philosophers and English scholars talk with triumph, two unhappy wretches were hung at Northampton, the seventeenth of March, 1705; and upon July the 22nd, 1712, five other witches suffered the same fate at the same place. The Judges who tried them might be very wise and upright men. But they were terrified at witchcraft, and employed all the wholesome severities which the laws had

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* See Gough's British Topography; the cases mentioned in the next paragraph may be found in the same book, vol. iv. p. 255.

provided against it. We are no longer scared at witchcraft. But can it be said that we are none of us subject to unreasonable and excessive prejudice against other offences, real or supposed?

"Suus cuique attributus est error;
"Sed non videmus manticæ quod in tergo est*."

From original temperament, from early education, from experience of personal inconvenience, and from various other causes scarcely known to ourselves, we all of us feel a stronger aversion to some offences, than to others. One man is alarmed at public robbery, another takes fright at private stealing, a third startles at heresy as bordering upon infidelity, a fourth kindles at republicanism as teeming with treason; and each, if it were in his power, would wreak the utmost of his vengeance upon the offender. But can it be right that the life, or the liberty, or the fortune of any human being should be dependent upon the greater or less degree of these moral idiosyncracies?

"Quid leges sine moribus vanæ proficiunt," was the question of one† who had looked with an attentive eye upon human life. But there is another question of equal importance. What avail the best laws without judicious and steady administration? Slow as may be the growth of useful laws themselves, I am convinced that the art of administering them well is yet slower. The suggestions of zealous and ingenious men, the temporary exigencies of society, a spirit of emulation in one state towards another, often give rise to the enactment of laws which in appearance tend to the public good. But the previous habits and opinions of a people may for a time present unforeseen and stubborn obstacles to the execution of them: and long it sometimes is before the prejudices or the corruptions of society are sufficiently subdued for the regulations of lawgivers

* Catullus, Carm. 20. † Horace.

to produce their proper and full effect. For this reason I have ever been anxious that the administration of laws among ourselves should stand free from every well-founded objection. Sure I am that in other countries, where some of the laws may appear more excellent than our own, the general method of administering them is much less correspondent to the original views of the legislator, and much less favourable to human happiness. My wish is to extend and to confirm the claims of my countrymen to this peculiar and noble praise.

In my remarks, then, on the practise of our Courts, where the nature of the punishment as appointed by the laws is not changed, but the extent of it is in many cases reserved for the discretion of Judges, I do not mean to insinuate that power is very frequently abused; and in the vigilance of public opinion, as well as in the virtue of Judges, I see many checks upon that abuse. But the mere possibility of it is an evil; and while Juries are employed, I am acquainted with no good which could not be easily and constantly obtained, if the evil, to which I advert, were wholly removed. Were the attempt to remove it made by a firm and enlightened legislature I am confident that the approbation of the public, founded on their progressive experience, would give additional weight to the authority of a statute.

"It is a maxim in politics," says Mr. Hume, "which "we readily admit as undisputed and universal, 'That a "'power, however great, when granted by law to an emi-"'nent magistrate is not so dangerous to liberty, as an au-"'thority however inconsiderable, which he acquires from "'violence and usurpation *.'" But there is a gradual and silent extension of power, which in its effects is scarcely less pernicious than usurpation, when under specious pretexts of necessity, it has been permitted to answer other purposes than those for which it was primarily conferred,

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* Vol. I, Essay 10.

and when having imperceptibly obtained the force of immemorial usage, it represses all investigation into its comparative merits and demerits in the actual business of life. Whatsoever in the degrees of punishment has been negligently overlooked or imperfectly defined in the laws themselves, leaves room for the discretion of the Judge to introduce severities for which particular cases will often furnish particular reasons. One precedent not only produces direct imitation, but paves the way for other precedents not expressly interdicted by the general rule; and whensoever bodies of men suppose their authority to be interested in the continuance of the practice, advocates are always at hand to set up usage in answer to utility, and even to maintain in opposition to facts, that the existence of usage itself is always a presumptive proof of utility. But he that looks back to the history of mankind will often see, that in politics, jurisprudence, religion, and all the great concerns of society, reform has been usually the work of reason slowly awakening from the lethargy of ignorance, gradually acquiring confidence in her own strength, and ultimately triumphing over the dominion of prejudice and custom.

In conformity to the opinions I have just now stated, I must confess, that instead of approving the modifications lately recommended by a most excellent man*, I should have been better pleased if the power of assigning a greater or a less punishment for private stealing had been vested jointly in the Judge who presided, and the jury who tried the cause—or, if the jury, after hearing and considering the arguments of the Judge, had been permitted to decide ultimately; and as in this statute the degree of punishment is less definite than upon other occasions, the inconvenience of such uncertainty might be lessened, if in any case where the aggravating circumstances were doubtful, some interval

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* Sir Thomas Plomer, now Solicitor General; and highly esteemed, when a young man, for his classical learning, by the late Dr. Foster, Master of Eton, Sir William Jones, and the writer of this note.

had been directed to pass with the consent of both, between the verdict and the sentence. A general fact may be easily understood. But the minute and numerous circumstances upon which the gradations of guilt, and of the chastisement to be inflicted upon the guilty, must often depend, ought to be weighed with the utmost care, and at a season, let me add, when the remembrance of evidence is fresh, and when the judgment is quite unclouded by any of those passions which in the course of a trial are frequently excited in the breasts of the most compassionate and the most intelligent. I speak not of the inconveniencies which may now and then arise where the crime and the punishment are definite, and where, if the fact be found by the jury, the law gives no alternative to the judge. The crime indeed of private stealing is now made definite, so far as a class of things can be described in legal terms. The punishment, however, for very wise and humane reasons is in some respects indefinite. But if the love of power, or predilection for a profession be disclaimed, I am at a loss to conjecture any solid reason why it should be granted to the jury to decide upon the crime, and left with the Judge indiscriminately and exclusively to appoint the punishment. Is it meant to furnish a *precedent* for all future proceedings of the legislature, when death is to be commuted for a penalty less severe? I hope not. Is there any *peculiar* property in the offence of private stealing, which renders it unfit for juries to decide on the greater or the less guilt of the criminal? I see it not. Have not juries the same interest with Judges in the prevention of offences, the same regard for the general welfare of society, the same veneration for the sanctity of an oath, and the same capacity to calculate upon such an occasion the physical effects of pain, as upon other occasions they are allowed to have in determining the illegal qualities of actions? It were an insult to the judicial character even to insinuate that they who now sustain it can never be touched with "a sense of our infirmities," and in the instance of private stealing the insinuation were untrue, as well as contumelious. Pity, we know, has produced an habitual and

a visible unwillingness in juries to enforce with all possible strictness, the law, as it formerly stood against that offence. But the same pity has, also, induced judges to search for circumstances of extenuation, to found upon them distinctions which might lead to acquittal from the capital part of the charge, and in appearance, at least, to evade the very laws which they were sworn to administer. "Magis "valebant acumina ingeniorum, quam auctoritas legis*." In this way has their wisdom been employed on the side of mercy; and why should it not continue to be so employed, in pointing out to juries the gradations of a sentence by which the offender should not be punished excessively, the community not be endangered, and the letter, as well as the spirit of the law not violated? If a difference *re integrâ* is to be made by the legislature, let the representative of the Sovereign be exclusively entrusted with a privilege resembling the glorious prerogative of sovereignty itself. Let him be invested with the power of acting from the more amiable feelings of his nature, and protected from the chance of following the less. Let him have the right, not of fixing arbitrarily the severest punishments, but of selecting the mildest, when the dictates of his own enlightened mind suggest to him that he can be at once compassionate and just. He can do so now without controul. But he can, also, do the contrary with impunity, and whatsoever respect we have, and, I am sure, ought to have, for the knowledge and the humanity of the present generation, we can have no security for equal knowledge and equal humanity in their successors at some distant period. "Omnia mala exempla "ex bonis initiis orta sunt; sed ubi imperium ad ignaros "aut minus bonos pervenit, novum illud exemplum a dignis "et idoneis ad indignos et non idoneos transfertur†." Experience has long shewn to us the danger of entrusting any

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* Bacon de Augm. Scient. quoted by Eden, cap. ii. of Principles of Penal Law.

† Sallust. Bell. Catalin.

great public interest to the prejudices and habits of single classes. When laws are to be enacted, we have the consent of Commons, Peers, and a King, whose different judgments, as affected by their different situations, are counteracted by each other, and who, after deliberation, are influenced by one common sense of duty, directed to one common object in the public good. When laws are to be administered, we have a jury to try the facts according to those laws, and we have a judge to explain in what extent, and upon what conditions the laws are applicable to those facts *. Time has evinced the safety of the practice, and therefore I was sorry to find that in a new statute, when the plea of usage could not be urged directly, the right of fixing the sentence † should be consigned to the Judge, who unquestion-

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* "The court," says Judge Foster, "not the jury, is to "judge the *malus animus*, which is to be collected from all cir- "cumstances," and bringeth the offence within the denomination of wilful murder, whatever might be the immediate motive to it. But this doctrine is not warranted by general practice, and as Eden observes, "is inconsistent with Foster's statement that the "mischievous intention is a matter of fact to be collected from "circumstances. But if it be a matter of fact, not a matter of "mere law, the jury, and not the court, are to collect it. Juries, "by the advice of the Judge may find special verdicts; but I have "never met with any clear and express statement of a general "principle that in trials of capital offences Juries, if their con- "sciences permit them, are not authorised to decide upon the "point of law as well as the point of fact, and it is the peculiar "province of the Judge to enlighten the ignorance and to correct "the mistakes of juries, if they make any, upon questions of "law as applicable to the cause which they are trying." (See Eden, p. 228)

† Hale, who supposes that "the power and authority of the "Court and Judges would go a great way in the reformation of "things amiss in the law, without troubling Parliament, after-

ably will understand the case, but refused to the jury, who with his assistance are equally capable of understanding it, and who have an equal interest with him, and all their other fellow-subjects in endeavouring to understand it well.

In the course of the debate on Sir Samuel Romilly's motion, it was proposed that persons convicted of private stealing *should be subjected to hard labour or not at the will of the Crown**. But I suspect that such a proposal is not

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" wards adds, that in ' the remedies that are given by Parliament " the law should be particular, and as little left *arbitrio judicis* " as may be." (Cap. iv of Hale on the Amendment of the Laws.) If this precaution be expedient in the amendment of our civil code, where it is recommended by Hale, yet more important must it be in every reform of our penal code, and in every statute which is added to it previously to such reform.

* Such introduction of the Sovereign's name in Parliamentary debates ought not to pass unnoticed. The suggestion which I condemn, has fortunately not been admitted into the new statute. But it deserves to be remarked as a very unusual stride in legislation, that the whole punishment of a crime formerly capital, should be at once deposited in the Judge or Court only; and that a discretionary power of extending the penalties to accomplices should be granted so largely. After repealing so much of the statute of the VIIIth of Elizabeth as takes away the benefit of clergy from persons stealing privily from the person of another, the statute contains the following clause for more effectually preventing the crime of larceny from the person.

" And be it further enacted, That from and after the passing " of this act, every person who shall at any time or in any place " whatever, feloniously steal, take, and carry away any money, " goods, or chattels from the person of any other, whether privily " without his knowledge or not, but without such force or putting " in fear as is sufficient to constitute the crime of robbery, or *who*

quite agreeable to the spirit of our constitution, or the usage of our laws. According to the constitution, the prerogative has been hitherto employed not in the ungracious office of aggravating, but in the more amiable task of mitigating punishment. The strength of that prerogative may be *felt* in its justice, but should be *seen* in its mercies rather than its terrors. The King, according to the usage of our laws, may substitute transportation or imprisonment for death—But so jealous were our forefathers of placing too much in the hands even of the Sovereign, that if death be inflicted, he is not permitted in ordinary cases to alter the nature of that death, and is forbidden to mitigate or sharpen the pains of the sufferer by a discretionary power similar to that which enables a Judge to extend or to shorten the terms of imprisonment and transportation. The murderer *must* be dissected, or hung in chains—the traitor must be conveyed in a different manner from other malefactors to the place of execution, and must be embowelled * and quartered, though he be

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" *shall be present, aiding, and abetting* therein, shall be liable " to be transported beyond the seas for life, or for such term not " less than seven years as the Judge or Court before whom any " such person shall be convicted shall adjudge, or shall be liable " in case the said Judge or Court shall think fit to be imprisoned " only, or to be imprisoned and kept to hard labour in the com- " mon gaol, house of correction, or penitentiary house, for any term " not exceeding three years."

* I find two exceptions—Ashton in 1690, and Matthews the printer, in 1719, were hanged until they were dead, without any subsequent quartering or beheading. But the general practise is not to execute *strictly* that part of the sentence which directs traitors to be hanged by the neck, but *not till they be dead.* If the execution of any criminal so varies from the judgment, as to aggravate the punishment beyond the intention of the law, it would be murder in the sheriff. (See Eden, p. 208.)

previously strangled. Even in the excepted cases of condemned noblemen, the King may remit a part of the punishment, but can make no addition to it; and the remaining part which is executed must always be included in the sentence, and therefore apparently proceeds, not from the arbitrary will of an individual, but from the impartial authority of the laws. Why then in the punishment of private stealing should the Sovereign be invested with new and extraordinary power, to be exercised, if it should so please him, on the side of severity? The introduction of the Sovereign's name appeared to me unnecessary and improper. All the ends of public justice would have been secured, if the statute had expressly doomed the offender to hard labour, and tacitly left it to the general prerogative of the Crown to permit or to mitigate this part of the punishment.

As my objection to the amendment of the new statute chiefly relates to the power which it bestows upon Judges, I am very solicitous to avert the imputation of disrespect to their office.

Now Dr. Paley, whose veneration for that office was not greater than my own, states some instances in which "more "exact justice might be rendered to the suitors, if the de- "termination were left entirely to the Judges, provided we "could depend upon the same purity of conduct when the "power of these magistrates was enlarged, which they have "manifested in the *exercise* of a *mixed* and *restrained* au- "thority." "But this," says he, "is an experiment too big "with public danger to be hazarded*." Upon the same principle, too, I reason, when I disapprove of a law which gives to Judges the exclusive power of assigning the punishment for private stealing, and indeed for any offence which juries are appointed to try. But the opinions I hold of their *responsibility* to the public are mingled with sincere and profound reverence for their office. "He that has

* Chap. viii

"struck a magistrate," says an ancient writer, "τὴν τάξιν "τῆς πολιτείας ἀνεῖλεν," "and deserves to be punished not "with blows, but death *." The principle, I grant, extends from actions to all false and slanderous words uttered against those persons who "execute judgment," not "with violence, "but according to truth." The force of that principle † is recognised, not only in the authoritative regulations of states, but in the sober reflections of all mankind. Yet the application of this, as of every other moral rule, may be controlled by external circumstances. They to whom the happiness of man is entrusted, must, in some way or other, be answerable to the serious and unperverted judgment of man for the discharge of that trust. The prudential and decorous habits which we acquire in the civilized state, will often induce us to spare the individual for the sake of the office, though in *foro conscientiæ* the office may enhance the guilt of the individual. In the ordinary and quiet flow of worldly affairs we know from experience, that shame is a more efficacious remedy than those legal penalties from which it is sometimes invidious to seek redress, and sometimes difficult to obtain it. We know, farther, that Judges like other moral agents stand in need of allowances for mistakes and frailties, that the *summum jus*, if perpetually exercised against them, would be *summa injuria*, and that frequent impeachments would gradually break down that

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* Vid. Andronic. Rhod. lib. v. cap. 6, and Aristotle's Ethics, lib v. cap. 5.

† "Thou shalt not revile the Judges." (Exodus, cap. xxii. verse 28.) Our English version gives *Gods* in the text, but *Judges* is placed in the margin. ALEIM is the word in the original. It occurs also in verses 8 and 9 of this chapter, and is there properly translated *Judges*. Great as was the licentiousness among the Athenians, they were not permitted to speak sarcastically of the court of Areopagus. (Vid. Petit. Leg. Att. lib. iii. title II. Par. 26.)

respect, which answers many public as well as private purposes, and which not only protects the persons and characters of Judges from licentious insult, but gives additional weight to their most wise and equitable decisions. On the other hand, it were idle to talk of responsibility in those to whom the sacred task of administering the laws is committed, if gross partiality, if abject servility, if the profligate exactions of a Dudley and an Empson, if the obdurate cruelty of a Jeffries, or the brutal ferocity of a Page were exempt from every kind and every degree of reprehension. No honest Judge would wish for that exemption, and in a land of freemen and Christians a dishonest one would claim it in vain.

The natural sentiments of mankind may be collected from their uniform practice; and to those *communes intelligentiæ*, which are much surer criteria of right and wrong than the theories of philosophers or the decrees of potentates, what sentiment can be more congenial than that "the "powers which are ordained by God" should be exercised steadily and solely for the benefit of God's creatures? Every subject has a deep and permanent interest in the measures of every sovereign; and if under every legitimate government he is accustomed in some form or other to express his disapprobation as well as approbation, surely he is entitled to speak with equal freedom about the representatives of the sovereign in that administration of justice, which stands among the most important functions of sovereignty itself. Circumspection, I allow, mingled with a spirit of candour and dutifulness unfeigned, becomes him alike as a good citizen, and a good man. Yet the ground of every legal and every moral obligation for him to be circumspect is the supreme usefulness of the judicial office, and the consequent necessity of protecting it from the misrepresentations of the turbulent, and even the suspicions of the virtuous. The dignity of that office itself is most firmly secured, and its best purposes are most effectually promoted, when they who are most interested in those purposes make just distinctions between the protector and the oppressor. Some occurrences

which I can neither slight nor forget, furnish me with weighty reasons for pursuing this subject.

I have now and then met with persons, who, if the subject of responsibility in Judges was mentioned, would preserve a sort of systematic taciturnity, which betrayed at once their consciousness of the fact, and their unwillingness to have it discerned by the vigilant, or discussed by the inquisitive. They frowned, as if it did not exist, while they perhaps would have acted, as if it did. They never ventured to deny the right of observation and censure, and yet were always on the watch to detect and condemn the slightest error in the exercise of it. But their captiousness was at the expence of their consistency. For, where is the propriety of throwing our courts open to subjects of every age, every sex, every condition, and every employment, if it were not meant that "hearing with their ears, and seeing "with their eyes, and understanding with their hearts, they "should be saved" from every kind of injustice? Where, let me ask, would be the public safety itself, if in cases, in which decisions often supply precedents, and in which the community is always endangered by wrongs done to the individual, there is no controul from public opinion? Where is the possibility of controul itself, if opinion is to be stifled in sullen and dastardly silence? Where is the chance of opinion itself to be right, if men are always forbidden to investigate? Where is the mischief of even the strictest investigation, if Judges have been really just and impartial? Mistakes may be *corrected*, as well as committed, in the course of free and dispassionate enquiry; and in the absence of those narrow jealousies which pervade the concerns of private life, our minds are so formed, that we readily become converts to truth, at once interesting and agreeable to us, make a kind of common cause with the guardians of the public weal, and rally round them with increased attachment, when their conduct has been fairly and fully vindicated. But if resentments, originally excited by provocations, which the stretched out arm of power could not reach, were to be let loose with unrelenting fury

upon *other* offences committed against other men, or covertly to aid in chastising the real libeller beyond his real demerit—if all the tricks of rhetorical exaggeration and technical sophistry were to be employed in extracting circuitously and invidiously the motives of our actions from doubtful phrases, and detached or mutilated passages—if warmth of temper were to be miscalled depravity of heart—if hasty censures were to be confounded with deliberate calumnies—if mistakes, unaccompanied by personal antipathy, or seditious intention were to be tortured into crimes by the subtleties of lawyers, and punished as such by the authority of the laws—severity, in any of these supposed cases, would be unwarrantable, and eventually might aggravate the mischief which it was designed to avert. In contests between man and man, cunning may be defeated by cunning, and force may be repelled by force. But oppression under the colour of justice is always more formidable from the arts which are used to disguise its malignity. It exasperates the restless, and disheartens the obedient. It leaves men of almost every condition helpless and hopeless. It accustoms them to look upon their best securities, as perverted into instruments for the worst purposes by those who can be, and who ought to be, the best protectors of their social interests and social rights. It compels them to exchange love for hatred, confidence for distrust, and submission for resistance. These considerations, dear Sir, though obvious enough to our common sense, may not always in our practice be regarded with sufficient seriousness, and the artificial, slavish, delusive maxims sometimes opposed to them cannot be watched too narrowly, or sifted too closely, or reprobated too sharply. On the other hand, it were scandalous and it were perilous to lose sight of those simple but solid principles upon which our reverence for the ministers of the law becomes most reasonable and most salutary; and if regulations inconsistent with those principles should any where exist, we cannot be mistaken in supposing that the respectability of the government, and the

welfare of the community will be promoted by their removal, rather than their continuance.

Let me not be suspected of the smallest intention to lower the dignity of the Judicial office, or to undervalue the usefulness of those qualifications which study, experience, independence on the favour of the Crown, and a sense of responsibility to the opinions of a vigilant and enlightened people must tend to produce among our countrymen. I scorn to be the apologist of deliberate slander, either in the private or public concerns of human life. I contend for the strict observance not merely of truth, but decorum. Though an advocate for mere justice* to the dead, whose good or evil qualities may sometimes be developed in order to recommend or to counteract their example, I would mingle deference and tenderness with impartiality towards the living. I acknowledge the contempt I should otherwise feel, to be converted into indignation, when flippant buffoonry or venomous sarcasm is employed to estrange the lower classes of mankind from the confidence they are wont to repose in useful men, and the reverence they ought to entertain for useful things. Far be it from me, therefore, to maintain that there are no seasons in which prosecutions may be instituted, even in opposition to the wishes of the calumniated party, and for reasons which deeply affect the interests of the community. But if such prosecutions were, as among ourselves they are not, very frequent, they would be injurious eventually to the salutary freedom of the press —if conducted with arrogance, or virulence, or ferocity, as by Crown lawyers they sometimes are, they would be deservedly odious—if followed up by measures of extreme rigour, they would in process of time call aloud for investigation and restraint from the wisdom of Parliament. There is, indeed, scarcely any species of power

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* The restrictions I state will prevent all violation of Chilo's well-known rule, "τὸν τεθνηκότα μὴ κακολογεῖν." Diog. Laert. lib. i. segm. 70.

which a people jealous of their liberties, and anxious not to abuse them as a "cloke for maliciousness," ought to watch more attentively, because there is none which marches with such firm and silent steps of method, retires behind such strong ramparts of authority, or sallies forth with such formidable hosts of precedents. "Quod hodie "exemplis tuemur, inter exempla erit *."

Presumptuous it were for me to censure any man, who knowing the importance of his office, and willing to discharge the duties of it well, should avail himself of the succour which the laws hold forth to slandered innocence, and insulted dignity. But I may be permitted surely to bestow equal commendation upon the magnanimity of those distinguished statesmen, who in our own days have suffered scandal to spend its strength without using any other expedient to defeat it, than calm and determined perseverance in not deserving it. In truth, dear Sir, I have often observed, and perhaps I have experimentally found, that innocence, which for the most part is finally supported by the moral sympathies of mankind, affords sufficient redress to individuals; and I have suspected that, upon the whole, greater evil than good arises to governments from promptness of accusation †, however well founded, and frequency of punishments, however legal. In the triumphs of the strong ‡

* Tacit. Annal. lib. xi. par. 8.

† "Plerique mortales, etiam in impiis hominibus sceleris "eorum obliti de pœnâ disserunt, si ea paullo severior fuerit." (Vid. Sallust in Bell. Catalin.) Mischievous as might be the political views of Cæsar in his speech about the conspirators, his general observations are just.

‡ "In omni certamine, qui opulentior est, etiamsi accipit "injuriam, tamen, quia plus potest, facere videtur." (Orat. Micips. in Sallust. de Bell. Jug.)

over the weak a sudden impulse of self-preservation turns aside the minds of men from the merits of the cause to the inequality of the parties. There is always a lurking suspicion, that less of lenity, or less of impartiality has been preserved than in disputes between equals. There is always a painful apprehension, that the power which to-day protected right, may to-morrow be wielded with equal alacrity and equal success in defence of wrong. Sometimes there is a confused and angry remembrance of a caution laid down by the son of Sirac, "Μὴ δικάζε μετὰ κριτοῦ· κατὰ "γὰρ τὴν δόξαν αὐτοῦ κρινοῦσιν αὐτῳ*." But lenity, which in private persons may sometimes be imputed to indolence, or to vanity, or to imbecillity of character, when found in governments is rarely appreciated below its intrinsic merit. In this land of freedom and civilization it would not be confounded with that licence which good-nature conspiring with policy induced Julius Cæsar to tolerate among a people "qui nec to-"tam servitutem pati poterant, nec totam libertatem †," and which the regni novitas ‡ did not permit his crafty successor to check suddenly and entirely. With the highest advantage to our rulers it might be compared with those capricious and cruel restraints which some later Roman Emperors imposed upon the speeches and the writings of their subjects, and which have been imitated, I fear, too often in certain nameless parts of Christendom. O my friend! this celestial virtue brings with it blessings innumerable and inestimable. It soothes the unquiet, and charms the benevolent—it is welcomed as an appeal to the good-sense and the gratitude of mankind, rather than their fears—it calls forth our admiration, reverence, and affection—it binds our judgments and our hearts to the seat of justice, and the throne of majesty—it is ascribed to conscious integrity reposing on its own substantial worth, and conscious strength disdaining alike to seek and accept any foreign succour.

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* Chap. viii. verse 14. † Tacit. Hist. lib. i. par. 4.

‡ Virg. Æn. i.

Happily, dear Sir, in this empire, spectacles of judicial tyranny are very rare, and sooner or later its consequences would be discussed, and its advocates would be condemned. The genius of the people, and the spirit of their laws are upon the whole favourable to rational freedom of enquiry upon every topic of jurisprudence, legislation, politics and religion. Peculiar and preeminent are the advantages which we enjoy, and if duly estimated they will be found to make it safe as well as honourable for the legislature to employ its wisdom in applying either gentle palliatives, or vigorous remedies, to any evil under which we may labour. Glad I am that in the course of my reflections upon a recent statute I have been led to these general observations upon our old and sacred rights.

The mention of those rights suggests to my mind another subject well deserving the attention of those, who while they would rectify the faults, ought not to overlook the excellencies of our judicial proceedings.

Upon the objects or ends of penal justice there is little different in the statements of any writers. But they are expressed with peculiar precision by Mr. Bentham in the following words: "Example—prevention of similar offences "on the part of individuals at large, viz. by the repulsive "influence exercised on the minds of bystanders by the "apprehension of similar suffering in case of similar delin-"quency."

"Reformation—prevention of similar offences on the "part of the particular individual punished in each in-"stance, viz. by curing him of the *will* to do the like in "future."

"Incapacitation—prevention of similar offences on the "part of the same individual by depriving him of the *power* "to the like."

"Compensation or satisfaction—viz. to be afforded to "the party specially injured when there is one."

To these Mr. Bentham adds "œconomy," which in his work on the principles of legislation is explained at large. "But of all the foregoing ends, example," he observes, "is

" beyond comparison the most important. In the case of " reformation and incapacitation for further mischief, the " parties in question are no more than the comparatively " small number of individuals who having actually offended, " have moreover actually suffered for the offence. In the " case of example the parties are as many individuals as " are exposed to the temptation of offending: that is, taking " the calendar of delinquency in the aggregate, the whole " number of individuals of which the several political com- " munities are composed—in other words, all mankind *."

I would add that the end of *example* is in this country promoted indirectly by the publicity of our trials.

" Publicity is not less auspicious," says Bentham, " to " the veracity of the witness than to the probity of the " Judge. Without publicity all other checks are fruitless; " in comparison of publicity all other checks are of small " account. It is to publicity more than to every thing else " put together, that the English system of procedure owes " its being the least bad system as yet extant, instead of " being the worst. It is for want of this essential principle " more than any thing else that the well-meant labours of " Frederick and Catharine in the field of justice have fallen " so far short of the mark at which they aimed †."

This advantage, then, the inhabitants of England pre-eminently enjoy, and the value of it has been beautifully illustrated by two celebrated writers.

" A fourth requisite," says Paley, " in the constitution " of a court of justice, and equivalent to many checks upon " the discretion of Judges, is that his proceedings are carried " on in public *apertis foribus*; not only before a promiscu- " ous concourse of bystanders, but in the audience of the " whole profession of the law. The opinion of the Bar con-

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* See A Letter to Lord Pelham, page 3.

† See Bentham's Observations on the Draught of a Code for the Organization of a Judicial Establishment in France, p. 26.

" cerning what passes will be impartial, and will guide that " of the public. The most corrupt Judge will fear to in- " dulge his dishonest wishes in the presence of such an as- " sembly: he must encounter what few can support—the " censure of his equals and companions, together with the " indignation and reproaches of his country *." Deeply struck with the importance of the subject Mr. Bentham suddenly elevates his style to an equal strain of eloquence. " Publicity," says he, " is the very soul of justice. It is " the keenest spur to exertion, and the surest of all guards " against improbity. It keeps the Judge himself while try- " ing under trial. Under the auspices of publicity the " causes in the court of law, and the appeal to the court " of public opinion are going on at the same time. So " many bystanders as an unrighteous Judge, or rather a " Judge who would be otherwise unrighteous, beholds at- " tending in his court, so many witnesses he sees of his un- " righteousness, so many condemning judges, so many " ready executioners, and so many industrious proclaimers " of his sentence. It is through publicity alone, that justice " becomes the mother of security. By publicity the temple " of justice is converted into a school of the first order, " where the most important branches of morality are en- " forced by the most impressive means: into a theatre where " the sports of the imagination give place to the more in- " teresting exhibitions of real life †." If our penal code were reformed, would not the same circumstance of publicity accelerate and ensure the best effects of such reformation, and supply the deficiencies which Mr. Bentham imputes to the regulations of Catharine and Frederick? In our capital punishments publicity is strictly observed, and it perfectly answers two great purposes. It shows that death is inflicted upon the person who had been really condemned, and in the manner really prescribed by the laws.

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* Paley, chap viii.

† Draught of a New Plan, &c. p. 26.

Yet from my observations upon the more immediate effects of public executions, I am convinced that some improvement in the mode of conducting them ought to be attempted. Curiosity is now gratified. Pity is excited. That Terror is not sufficiently impressed, seems to be owing to the frequency and sameness of the spectacle, to the want of solemnity in its forms, to the disgusting coarseness or shocking insensibility of the persons whose agency falls within the direct notice of the beholders, and to the absence of those vivid and lasting associations, which are likely to be produced by *contiguity of place* in the crime and the punishment.

I by no means adopt the splenetic rant of some unknown personage in an ancient comedy, by whom νόμοι are enumerated with "ἀγωνίαι, δόξαι, φιλοτιμίαι," among the "ἐπίθετα τῇ φύσει κακά*."

But if it be worth while for any state to lessen the number of its members by the destruction of criminals, consistent and sound œconomy seem to require that every expedient should be tried for making the example of their sufferings widely and permanently efficacious. No human blood need be shed to wound the sensibility of the spectators. No additional pain need be inflicted upon the offender. But alterations might be introduced with good effect in the choice of ceremonies and places for the execution of malefactors.

The new statute against private stealing, though encumbered with some doubtful amendments, will always be considered by me as supplying a most desirable alternative for the infliction of death.

"Hac me exempta juvat spinis de pluribus una†."

I rejoice, too, that the generosity of the English character, however restrained by that decorum which ought

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* Vid. Menand. † Hor. Epist. ii. lib. 2.

to accompany the awful task of legislation, was conspicuous through the whole debate in the House of Commons. But I cannot dissemble the concern I felt at the resistance made to the motion of Sir S. Romilly by some gentlemen of the long robe, and without venturing to answer for the correctness of a newspaper representation, I shall set before you a striking passage which I read in the Evening Mail of June 17, 1808.

" To prove the prevalence of this species of confederated " plunderers in other parts of the kingdom, as well as the " metropolis, he stated that in the Spring Assizes at the Court " Palatine of Chester, in 1806, there came before himself " and the magistrate a kalendar of forty prisoners, amongst " whom were seventeen boys, between the ages of twelve and " sixteen tried, some for minor and some for capital offences, " and it appeared that they were regularly trained to the " business of robbery, going forth together in gangs, concert- " ing their plans and setting projects of vigilance for each " others security. Four of those boys were convicted, two of " them capitally, and he was convinced that those who were " acquitted owed their escape rather to the lenity of their " prosecutors and the jury who tried them, than to their own " innocence: the two boys capitally convicted suffered judg- " ment, and the good effects were manifest in the prevention " of similar confederacies ever since. From this circumstance " he was persuaded, that if the present bill passed it would " be considered by such criminals as *a proclamation of impu-* " *nity*, and if he was induced to commute the capital pun- " ishment in such cases, it must be for some other little short " of capital, such as transportation for life, which it would " be for his Majesty to remit or mitigate as he should think " fitting, according to the degree of the offence, for fourteen " or seven years with or without hard labour."

Upon enquiring who the speaker might be, I was told that he is much connected with the very respectable Duke of Marlborough, that he has represented one or other of the Oxfordshire boroughs in several Parliaments, that he bears the reputation of being a sensible lawyer, and is now Chief

Justice of Chester. When, therefore, he thought it incumbent upon himself to communicate the results of his own personal experience, and the motives of his own official conduct, before the members of a legislative assembly at the very moment when they were deliberating upon a question of life and death, he must have been aware that no remark, no statement, no argument brought forward by such a man upon such a question, could fail of engaging peculiar attention from his audience, and from the public. I would pay all the deference that is due to his station—I have no doubt of his sincerity—I commend his frankness—I give him credit for his readiness to transfer to the new statute the same fidelity and zeal which he manifested in administering the law lately abolished; and he in return will not be displeased with me for adverting to his speech. My hope, indeed, is that his name will never be forgotten. I trust that to the merit of his action in directing two very young persons to suffer judgment for private stealing, and to the validity of his reasons for thus inflicting a punishment confessedly severe, and confessedly rare, the most ample justice will be done by his contemporaries, and by their children's children. It must be his own wish as well as mine that the comparative humanity of the new law may be equally efficacious with the acknowledged rigour of the old. He will think it his duty to distinguish between ringleaders and their accomplices—between those who immediately "steal from the per-"son, and those who shall be present, aiding and assisting "therein"—between rash noviciates of fourteen or sixteen, and hardened adepts of thirty or forty.

Large are the allowances I would make for ardent language when the debate turns on subjects merely political, and the spirit of party under restrictions is by the common consent of mankind considered as venial. But in grave deliberations, the result of which is to affect the life or the personal liberty of man, I cannot look with indifference on rhetorical hyperboles, especially if they happen not to be uttered on the side of lenity, which in truth does not stand in need of them, and if they proceed from those respect-

able persons who are officially authorized according to their discretion to destroy or to spare a convicted malefactor. With surprise, therefore, I read that the abolition of the greater punishment for private stealing would in the opinion of the speaker amount to *a proclamation of impunity*. To me, on the contrary, it appears that the new statute carries with it an authoritative and most alarming *assurance*, that the less punishment *will* be inflicted, though with increased or diminished rigour according to circumstances. It combines policy with justice—it substitutes frequency and certainty of punishment for excessive severity—it averts the evil which the experience of every day proves to be real, when, as Mr. Eden says, "the excess of the penalty flatters the imagina-" tion with the hopes of impunity, and thus becomes an ad-" vocate with the offender for the perpetrating of the of-" fence."

By admitting the principle of circumstantial exaggeration, the statute is destitute of that precision which it must have had, if death had been denounced. But delinquents must *know* that *some* punishment will be inflicted, and in order to remedy some of the inconveniencies which may proceed from uncertainty in the degree of it, I have ventured to express my wish that the juries rather than the Judge, or, conjointly with him, should have been authorized to fix that degree. At all events, there is less danger when the human mind is left to calculate upon the greater or the less extent of the punishment now ordained, than upon the probability of escaping from the heavier punishment of death which the laws had before appointed, and to which the compassion of the jury rarely permitted them to expose the accused. An offender who now hopes for mitigated punishment formerly reckoned upon the chance of complete acquittal. Hence cunning, rashness, and *progressive* obduracy were the effects usually produced upon criminals by the unsteady administration of capital punishments.

A recent instance of this deplorable state of mind has fallen within my notice. A youth of twenty-two had deserted more than once—he betook himself to robbery. He anticipated death as the probable punishment of his thievery or his desertion. He neither cared, nor professed to care at what time or in what manner it might overtake him. He despaired. He plundered. He defied the wrath of man. He frowned at the mention of God. "He laughed "at a violent death as the affair of a moment *." And without shewing the smallest sign of shame, or compunction, or terror, he underwent the sentence of the law.

Public executions are intended, I suppose, as was said of Tragedy, "δι ἐλέου καὶ φόβου περαίνειν τὴν τῶν ανθρω- "πίνων παθημάτων κάθαρσιν †." But that the execution of an offender in a narrow lane and amidst a few spectators, should operate as an example, exceeds, I must confess, my powers of belief, and even comprehension, "ὁ φοβερὸν, "οὐδ' ἐλεεινὸν τοῦτο, ἀλλὰ μιαρόν ἐστιν ‡." A general rule, I grant, must not be suspended on account of every particular case. But is it unworthy of our wisdom or our humanity to calculate the general effects of the general rule itself? The wretch of whom I am speaking no longer annoys society. But no attempts prescribed by the laws were made to render him useful to it. He was cut off from existence at a time when from his youth and his strength he might have been compelled to be useful. He was hurried into eternity, for which he was little prepared; and are these light considerations? He must be something more, or something less, than man, who would dare to call them so.

"The pains of death," says Blackstone, "and perpetual "disability by exile, slavery, or imprisonment ought never "to be inflicted, but when the offender appears *incorrigible*: "which may be collected either from a repetition of minute

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* Beccaria, cap. xxviii. † Aristotle, Poet. cap. vi.
‡ Aristot. Poet. cap. xiii.

" offences, or from the perpetration of some one crime of " deep malignity which of itself demonstrates a disposition " without hope or probability of amendment." I do not assent to the principle that the incorrigibleness of the offender is a necessary condition for the infliction of death. Men not radically and habitually vicious are precipitated by sudden temptations into heinous crimes by which the public safety is endangered, and for which alone they may deserve to die. Blackstone was too sagacious to talk of capital punishment as " meant for the *amendment* of the " criminal, because this end is absolutely defeated when " we put him out of the world*." He would not, I suppose, have maintained that " human judgment can determine " whether it be for the benefit of a delinquent *deemed* in- " corrigible to be excluded from society or to remain in it." " Possible it is at least that the delinquent whom we suppose " irreclaimable might, if indulged with life, forsake the ha- " bitude of evil: and we assume greater sagacity than be- " longs to our finite comprehension, when we presume to " decide, whether it is better for a criminal with respect to " himself alone, to die or live†."

The criteria, then, which Blackstone lays down are to me quite unsatisfactory. Who by any general rule can adjust the *precise number* of smaller offences which make a man irreclaimable? Who that recollects the quick and strong impulses under which great crimes are sometimes perpetrated, will maintain that in the future absence of similar temptation the offender may be more than a harmless member of society, and that stung by remorse for his past misconduct he will not endeavour to expiate it by amendment of life? Who has thrown open to the eye of man the whole chain of those events, which in the moral order of things may gradually or instantaneously work together for the good of the vilest transgressor? Who does not know that in the common course of worldly affairs the pains of sick-

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* See Dagge, vol. i, p. 215. † Ibid.

ness or the shocks of calamity have wrought the most powerful effects upon persons who in appearance were quite callous? Who can calculate the influence which solitude, hard labour, and occasional encouragement mixed with occasional restraint may have upon the stoutest spirit? Who has not been told of criminals who after arriving, as we think, at the most excessive pitch of profligacy have yet reformed? Who has not seen instances in which the rigour of the laws has driven them to despair?

To capital punishments beyond all others the rule of Tully is applicable: "Ut pæna ad paucos, *metus ad omnes* "perveniat *." In regard to other men, spectacles of death may have their use, not only by shewing the danger of an enormous crime, but by restraining men from those lighter offences which may lead to the commission of it. In regard to the sufferer the prospect of that death, not the infliction of it, might be intended for his benefit. Dr. Paley, who looks for little effect from punishment in the way of amendment, and who seems to think that malefactors return more hardened in their crimes and more instructed from imprisonment and exile, pain and infamy, yet supposes that "the horrors of impending death may "cause such a wrench in the mental organs of a confirmed "villain as to give them a holding turn:" he even thinks "it probable that many of those who are executed would, "if they were delivered at the point of death retain such "a remembrance of their sensations as might preserve them, "unless urged by extreme want, from relapsing into their "former crimes. This however is an experiment that from "its nature cannot be repeated often †." But what I ask is to preserve them from *such* want in a country which has not only neglected hitherto to secure a maintenance for those criminals who are even willing to work for it, but in which "public punishment," according to Dr. Paley's own confession, "precludes them from all manner of honest

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* Pro Cluentio. † Chap. ix.

" support." If an unhappy wretch who had been reprieved under the gallows were afterwards detected in the commission of a capital crime, little attention would be paid by the generality of the world to the peculiar circumstances of the temptation to it, and he would be pronounced incorrigible. But the judgment we thus confidently pass upon him might be erroneous and unrighteous. Though pierced with the sharpest taunts of an earthly Judge, and though insulted in his passage to death by the execrations of those " who deck themselves in purple and fine linen, and who " fare sumptuously every day," the sufferer may carry with him such a plea as will not be rejected by that Being " to " whom all hearts are open" and all causes are known. " I had no means, nor incitements," he might say, " to gain " a little reputation, because a stamp of ignominy had been " indelibly fixed upon me, before I was thrown back upon " an injured and incensed world. I fled from solitude and " reflection, because the past afforded me no satisfaction, " the present sustained my sinking spirits by no consola- " tion, and the future cheered me with no hope. I asso- " ciated with wicked companions, because good men shun- " ned me. I wandered, because I had no home. I loitered, " because no man would employ me. I stole, because the " importunate and irresistible cravings of nature would " not permit me to starve. A suspected vagrant in every " lonely village, a detested outcast in every crowded city, " cold and naked, hungry and thirsty, I no longer can " desire to live, nor fear to die." These excuses so generally disbelieved and rejected by man may be true, and if true, they are important, and if important, they may plead " trumpet-tongued" against the revilers of the unfortunate, when they meet together before the tribunal of Heaven.

Policy is never at a loss to find materials of justification in an inexhaustible storehouse, which I could never explore without distrust and loathing. But when the life of a fellow-creature may depend upon the *opinion* we form of his utter incorrigibleness, the decrees of nature and the oracles

of religion pronounce the same warning—" μὴ κρίνετε τὰ " κατὰ πρόσωπον βλέποντες ἵνα μὴ κριθῆτε."

" Those who have been witnesses to the solemn manner " in which executions are conducted in some parts of Eu- " rope, speak of the impression arising from *that* circum- " stance as wonderfully strong. Dr. Moore describes such " an execution which he was present at in Rome, and " mentions in strong language *how deeply* the populace were " affected by it *." Mr. Howard remarked the same thing in Holland: and accounting for the few executions which take place in the United Provinces, says, " one reason of " this, I believe, is the *awful solemnity* of executions, which " are performed in the presence of the magistrates, with " great order and seriousness, and *great effect* upon the " spectators †."

" Whoever will contrast this with the manner in which " executions have been heretofore conducted among us will " readily perceive that though we exhibit this terrible spec- " tacle, we do not derive from it all the benefits it was de- " signed to produce ‡."

The foregoing observations are applicable to executions in our own country. As to Rome, murders are said even now to be common there: but the police is very imperfect, and the solemnity of executions is counteracted by their frequency. " In Denmark," says the writer of an Inquiry into the Effects of public Punishments upon Criminals and Society, " uncommon pains are taken to prepare criminals " for death, by the conversation and instructions of the " clergy. After this they are conducted to the place of ex- " cution with uncommon pomp and solemnity. The crimi- " nals under these circumstances suffer death with meekness " —piety—and sometimes with dignity. The effects of this, " I have been well informed, have been in several instances

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* See Letter 44, vol. iv. † Prisons, p. 45.

‡ Bradford, p. 68—9.

" to induce deluded people to feign or confess crimes which " they had never committed, on purpose to secure to them- " selves a conspicuous death and a certain entrance into " future happiness. There is something in the presence of " a number of spectators which is calculated to excite and " strengthen fortitude in a sufferer. ' It is not so difficult " ' a thing (said Louis XIV. to his courtiers who stood " ' around his death-bed) to die, as I expected.' ' No won- " ' der,' says Voltaire, who relates this anecdote, ' for all " ' men die with fortitude who die in company *.' " The foregoing statements are important, and the inference I should draw from them is, not that public executions should be abolished, but that they should be accompanied with such solemnities as may subdue the fortitude of a criminal suffering before multitudes, or counteract the effects of that fortitude if it be unsubdued, upon the minds of the spectators—such as may convert their admiration of his courage into horror at his obduracy. There is little reason to fear that Englishmen will often be seized with the fanaticism which is said to precipitate the Danes into the perpetration or confession of crimes which lead to death, and of which I have read a striking instance—

" Non abs re forsitan fuerit, nec Lectori injucundum, " referre hic facinus novum, nec admodum credibile, nisi " testium multorum, ex quibus rem audivimus, fide nitere- " tur, nec longo ante adventum nostrum tempore in his " locis paratum. Vir Suecus, mente sanus, probus, bene " moratus, inter populares satis commodus, media luce " quadrimulum puerum, ante fores paternæ domus, palam " in vico inter æquales colludentem corripit, cultroque in " fauces adacto interimit. Comprehensus ille, et in judici- " um adductus, nec factum negavit, nec excusavit, nec facti " pœnam deprecatus est. Imo vero, inquit, me commeri- " tum esse mortem scio, eamque ut à vobis impetrarem hac " arte usus sum, cum probe norim vix tutiorem esse ullam

* Page 5.

" salutis æternæ adipiscendæ viam, quam cum sensibus in-
" tegris, corpore valido nec morbis debilitato, excedit an-
" ima, piis ad Deum religiosorum hominum sublevata pre-
" cibus, eorumque consiliis et adhortationibus excitata et
" adjuta. Quod mortis genus ut per vos oppeterem cùm
" fieri non posse intelligerem, nisi aliquo delicto capitali
" admisso, levissimum id esse judicavi quod à me perpetra-
" tum est, occiso puero nondum vitæ hujus corruptelâ in-
" fecto, parentibusque egenis, et numerosa prole onustis
" erepto. Quibus dictis capite damnatus, lætus ac reni-
" dens, sacrosque hymnos pleno ore decantans, supplicio
" affectus est *."

I shall not enter into a detail of the dangers which might arise from private executions, or into a description of the dreadful abuses which an oppressive government might make of such a custom. The most obvious consideration is, that punishment would very much lose the force of example.

The merits of the whole question upon capital punishments are well summed up by Mr. Bradford in the following words: " *If we seek a punishment capable of impressing* " *a strong and lasting terror, we shall find it in an execution* " rarely *occurring*, solemnly *conducted, and inflicted in a* " *case where the feelings of mankind* acquiesce *in its justice,* " *and do not revolt at its severity* †."

I plead not for the light treatment of any iniquity which deserves " to be punished by the Judge ‡." The intended preamble to the new law against private stealing, though incontrovertible in point of fact, though admissible as a *principle* in general reasonings on jurisprudence, and though worthy as *such* of the most earnest attention from every legislator, may be unfit to stand in the front of Sir S. Romilly's statute. At the

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* See the Commentary of Huetius de rebus ad se pertinentibus, Amsterdam, 1718.

† Page 36. ‡ See Job, cap. xxxi.

same time it is conceivable that the dissolution of a confederacy formed in a country town by boys who are between twelve and sixteen years old, may be purchased at a price which humanity and policy would be unwilling to pay—it is credible that the immediate transportation of the four who were convicted at Chester, and the unmitigated punishment of those who owed their escape to the lenity of prosecutors and juries might have been nearly as terrific to common minds, as the death of two—it is allowed that the acquittal of thirteen did not counteract the effects of example in the dreadful fate of the striplings who perished, and to me it is most improbable that a statute which exposes offenders to the solitude of a prison, and the hardships of Botany Bay for the whole remainder of their existence should be considered as "a proclamation of impunity" by any blockhead however stupid, or any thief however obdurate. The expectation of such a punishment may be more terrible even than the "prospect of death to men who are "tired of life in the manner they hold it, who commit crimes "to better their condition or put an end to their being, who "make their advances to the wickedness they intend to per-"petrate with a view of this alternative before their eyes, and "upon whom the terror of death hath not sufficient influence "to deter them from their desperate resolution *."

"However political casuists," says Dagge †, "may pride "themselves in subtilizing and reconciling moral repugnancies "with public necessity; we may venture to conclude that "whatever shocks the common sense and feeling of mankind "is faulty in its original establishment." That the old statute inflicting death was thus faulty seems to have been the opinion of those who tried the criminals at Chester—they were aware that gangs existed in the neighbourhood—they knew that the danger was encreased by the frequency of the

* See Dagge's Considerations on Criminal Law, Sect. ii. cap. 6.

† See Dagge, Sect. ii. cap. 5.

offence—they may be supposed to have been under some temptation to administer laws, as, alas! they are too often enacted, *flagrante irâ**. But that under such circumstances they were induced to shew so much lenity to so many offenders proves the truth and importance of an observation made by a Christian moralist and a profound philosopher, whose name was *not* mentioned during the late discussion of this question in Parliament. "Whatever may be urged," says Dr. Johnson "by casuists or politicians, the greater part of mankind, "as they can never think that to pick the pocket and to "pierce the heart is equally criminal, will scarcely believe "that two malefactors so different in guilt can be justly "doomed to the same punishment: nor is the necessity of "submitting the conscience to human laws so plainly "evinced, so clearly stated, or so generally allowed, but "that the pious, the tender, and the just will always scruple "to concur with the community in an act which their "private judgment cannot approve†." When punishments shall be inflicted with the lenity for which Beccaria contends, then, but *not till then*, would he, or any wise legislator plead for their certainty. Then, too, and then *only*, would a good man applaud himself for discharging the duties of a good citizen in compliance with Beccaria's‡ well-known principle: "Voluntary forgiveness of a small crime by the party "injured may be an act of good-nature and humanity, but it "is contrary to the good of the public. For although a private "citizen may dispense with satisfaction for his private injury, "he cannot remove the necessity of public example. The "right of punishing belongs not to any individual in particular, but to the society in general, or the Sovereign who "represents that society; and a man may renounce his own "portion of that right, but he cannot give up that of "others." Three times, let me confess, I have myself suffered the most painful struggles between the sense of private and of public duties; and three times, dreading the severity

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* Dagge, sect. ii. cap. 6. † Rambler, No. 114. ‡ Cap. 47.

of our law, I have yielded to my humanity conspiring with my reason, when they forbad me, without real *necessity*, to shed the blood even of the unrighteous. One of the offenders, after leaving my family ventured upon other crimes in other places—a second by my suggestion entered into the army. I have not been able to trace the conduct or the fate of the third—But under a deep conviction of my responsibility to the tribunal of Heaven I shall ever look back with approbation to my own forbearance.

Among the opponents of Sir S. Romilly one gentleman introduced the venerable name of Dr. Paley, and bestowed upon the Doctor's writings the most ardent and just commendation. It were rude to suppose that a Senator would refer to a book which he had not read, or that knowingly he would insist upon one part, but stifle another. But it so happens that the zeal of the person to whom I allude seems rather to have weakened the power of his memory. Dr. Paley does say that "great cities* multiply crimes by pre-"senting easier opportunities and more incentives to libertin-"ism, which in low life is commonly the introductory stage "to other enormities, by collecting thieves and robbers in "the same neighbourhood, which enables them to form com-"munications and confederacies that increase their art and "courage, as well as strength and wickedness, but princi-"pally by the refuge they afford to villainy in the means of

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* The best corrective I have seen to the dangers which hang over the public morals from large towns, is to be found in the principle of the penitentiary system recommended by Mr. Bentham.

"The *scene of punishment* would be the vicinity of the me-"tropolis: the very spot which contains the greatest number of "spectators of all descriptions, and in particular of those in whose "instance there is the strongest reason for wishing that the im-"pression may be made." (See page 4 of the first Letter to Lord Pelham.)

" concealment, and of subsisting in secresy, which crouded " towns supply to men of every description. These tempta- " tions and facilities can only be counteracted by adding to " the number of capital punishments." I do not distinctly understand whether Dr. Paley means that new statutes should be made, or that those now in being should be executed with greater severity, to counteract the temptations of which he speaks. I might perhaps with some *restrictions* assent to the latter. But I should hope that the steady infliction of the punishments already provided, or the appointment of others yet more severe, but short of death, would answer the purpose. Be this as it may, Dr. Paley most certainly affords *no* aid to the cause of the persons who resisted Sir S. Romilly. " It is enough," says Dr. Paley, " to vindicate the lenity " of the laws, that some instances are to be found in each " class of capital crimes which require the restraint of ca- " pital punishment, and that this restraint could not be " applied without subjecting the whole class to the same " condemnation." But let us observe what follows. " *There* " *is, however, one species of crimes, the making of which ca-* " *pital, can hardly, I think, be defended* even upon the com- " prehensive principle just now stated, I mean that of " *privately stealing from the person.* As every degree of force " is excluded by the description of the crime, it will be " difficult to assign an example where either the amount or " circumstances of the theft place it upon a level with those " dangerous attempts to which the punishment of death " should be confined. It will be still more difficult to shew " that without gross and culpable negligence on the part of " the sufferer such examples are probable, or were ever so " frequent as to make it necessary to constitute a class of " capital offences of very wide and large extent."

The introduction of Dr. Paley's most respected name upon a subject on which he does not differ from Sir S. Romilly reminds me of the anguish I suffered in reading in another part of his celebrated work some observations to which it is impossible for me to give my assent. The question is so important, that for the present I shall sus-

pend my remarks upon the statute against private stealing; and beg your attention to my reasons for not agreeing with Dr. Paley on another point.

"Vulgatum illud, quia verum erat, in proverbium "venit*." "It is better that ten guilty persons should es- "cape, than that one innocent man should suffer." This maxim is recognized by the learned Commentator on the laws of England, when he says, "All presumptive evidence "of felony should be admitted cautiously, for the *law holds* "that 'it is better for ten guilty persons to escape than for "'one innocent man to suffer†.'" It may be illustrated *mutatis mutandis* by the humane language of Julian, when he vindicates the relief which he had been accustomed to afford to the unhappy violators of the laws. "ὀυθὲν γὰρ "κωλύσει τὴν δίκην ἡ τοιάυτη φιλανθρωπία· χαλεπὸν γὰρ ἄν "εἴη, πολλῶν ἀποκεκλεισμένων ἐπὶ κρίσει, καὶ τῶν μὲν ὀφλησ- "όντων, τῶν δὲ ἀθώων ἀποφανθησομένων, μὴ διὰ τοὺς ἀναι- "τίους δικτόν τινα νέμειν ἐν τοῖς πονηροῖς· ἀλλὰ τῶν πονηρῶν "ἕνεκα καὶ περὶ τοὺς ὀυδὲν ἠδικηκότας ἀνηλέως, καὶ ἀπαν- "θρώπως διακεῖσθαι ‡."

Now Dr. Paley thus controverts this position. "If by "saying it is better, be meant that it is more for the public "advantage, the proposition, I think, cannot be maintained. "The security of civil life, which is essential to the value "and the enjoyment of every blessing it contains, and the "interruption of which is followed by universal misery and "confusion, is protected chiefly by the dread of punishment. "The misfortune of an individual, for such may the suffer- "ings or even the death of an innocent person be called, "when they are occasioned by no evil intention, cannot be "placed in competition with this object. I do not contend "that the life or safety of the meanest subject ought in

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* Livy, lib. xl. Par. 46. † Book iv. Cap. 27.

‡ Juliani Fragment. p. 533.

" any case to be knowingly sacrificed. No principle of ju-
" dicature, no end of punishment can ever require *that.*
" But when certain rules of adjudication must be pursued,
" when certain degrees of credibility must be accepted in
" order to reach the crimes with which the public are in-
" fested; courts of justice should not be deterred from the
" application of these rules by *every* suspicion of danger, or
" by the mere possibility of confounding the innocent with
" the guilty. They ought rather to reflect that he who falls
" by a mistaken sentence may be considered as falling for
" his country; whilst he suffers under the operation of these
" rules, by the general effect and tendency of which, the
" welfare of the community is maintained and upheld *."

When I reflect upon the severity of our penal code, upon the number of our penal statutes, upon the actual and almost unavoidable ignorance of many offenders as to the danger to which they are exposed from the extension or multiplication of those statutes, upon the rashness, weakness, cunning and malignity of witnesses, and upon the force of local or personal prejudices, from which jurymen are not always free, I am compelled to urge *Cassianum illud; Cui Bono* is so much resistance made to a maxim, the practical tendency of which is to render men cautious in shedding the blood of their fellow-creatures? They who are governed by that maxim, will readily admit, that " certain
" rules of adjudication must be pursued, and certain de-
" grees of credibility must be accepted in order to reach
" the crimes with which the public are infested." They do *not* mean, that " courts of justice should be *deterred* from
" the application of those rules by *every* suspicion of dan-
" ger, or by the mere possibility of confounding the innocent
" with the guilty." But they *do* mean, that under certain circumstances there may be *such* a suspicion of danger, such a remote *probability* of confounding the innocent with the

* Chap. ix.

guilty, that for the community it is better by a lenient application of judicial rules to let ten guilty persons escape, than to make one innocent man suffer by the rigorous application of them. They think, the security of civil life less interrupted by the aggregate consequences of sparing ten men who have violated the law, than by the aggregate consequences of saving one innocent man who is in imminent danger of destruction, though he has not violated it. They contrast the public welfare itself under *one* aspect, with the public welfare under *another* aspect. They oppose, *not merely* the sufferings of that innocent person himself, but the conscious security of *other* innocent men to the advantages which society derives from the punishment of ten or more guilty men. In the absence of direct *intention* to destroy an innocent man, they *would*, upon the *discovery* of his innocence, condemn themselves for want of caution, and want of lenity, if they had *not given the fullest force to every* circumstance, which made his guilt in *any* degree doubtful. And for giving such weight to such circumstances from motives of lenity and caution, they would *not* condemn themselves, though under similar circumstances, and from similar motives they should be induced to acquit ten persons, whose guilt afterwards became manifest. The nature of those circumstances, and the appearance they would assume to an attentive and honest juryman, must depend upon the case itself. But the general *preparation* of the mind to discern and to weigh them is, I think, a most important qualification for every man who may be called upon to pronounce a verdict of death. The controverted maxim may be vindicated as tending to *facilitate* that preparation.

If, indeed, the punishment were less than death, there would be less necessity for caution. But when it amounts to death, the caution cannot be too great; and when the greatest caution fails, would our conscience entirely acquit us, merely because we had at the same time been sincere and earnest in our endeavours to rescue society from ten real transgressors of the laws? Should we not feel at least some temporary distrust in those rules of adjudication,

which as applied by ourselves even without any evil intention, had bereaved the community of an innocent man? Some restless suspicion that we had attended too much to unfavourable, and too little to favourable circumstances? Some secret anticipation that, if placed in the same situation again, we should not again give the same verdict of guilt? Should we not shrink when we approached the unsuccessful assertors of his innocence? When we beheld the tears of his parents and his friends, and heard the unavailing moan of a widow and her orphans weeping over their lifeless protector? Though Dr. Paley is content to call the death of such an innocent person by the mild name of a *misfortune*, surely, upon the discovery of his innocence we must admit, that a *wrong* had been done to him. Though by a circuitous process of reasoning we might consider him as "falling for "his country," we should remember, that among the clearest descriptions of punishment, it is uniformly represented as an evil which "a delinquent incurs *unwillingly*," and therefore our grief would not be assuaged by the admiration we feel when the sufferings of a political or religious martyr are *voluntary*, and therefore meritorious. Though we "allow the security of civil life to be essential "to the value and the enjoyment of every blessing it con-"tains," we should not be so panic-struck as to look for *universal* misery and confusion as the consequence of a single, or even numerous interruptions. Though we might acknowledge that the escape of ten guilty men has *some* tendency to interrupt the security of society, yet we should not venture to deny that the punishment of one innocent man is *itself also an interruption* of that security, and if compelled to ballance one inconvenience with another, the soberest enquirer would meet with many galling difficulties in proceeding to a final determination. He would experience more reluctance and more diffidence than *usually* accompany the results of moral calculations. He would find it scarcely possible so to conduct the processes of severe reason as not to be checked again and again by misgivings from humanity. He might slowly assent to elabor-

ments, and yet shudder at the prospect of being personally employed in carrying them into action. When acquiescing in the general rule, he might be disposed to reserve the right of founding exceptions upon the kinds and the effects of particular crimes, and upon particular circumstances which attend the commission of them. He might say, for instance, that it is better for ten men guilty of murder to suffer, than for one man falsely accused of robbery to escape; and better for ten men who are guilty of robbery to escape, than for one man falsely accused of murder to perish. I cannot certainly disapprove of distinctions which tend to mitigate the rigour of the general principle. But I think the principle itself so dangerous to society, and so shocking to the best feelings of the heart, that I cannot accede to it under any qualifications whatsoever.

"*Courts of Judicature*," says Dr. Paley, "ought rather "to reflect that he who falls by a mistaken sentence may "be considered as falling for his country; whilst he suffers "under the operation of these rules, by the general effect "and tendency of which the welfare of the community is "maintained and upheld!"

I did not imagine that the considerations which Dr. Paley here recommends to Judges were in the smallest degree necessary to preserve *their* firmness in the administration of the laws; and I hold that beyond all other men they are bound to view such considerations with distrust, and even to advert to them with reluctance. Their skill in the laws, their experience in trials, their opportunities for observing the depravity of offenders and the effects of crimes, their consciousness of the high importance belonging to their office, and the known watchfulness of the public over themselves in discharging the duties of it are, it should seem, *sufficient* securities for the steadiness of their attention, and the uprightness of their instructions. Even in juries, a general detestation of wickedness, a general dread of the mischiefs which crimes produce in society, a general regard to the

safety of their own property and their own lives, a general conviction of the usefulness and respect for the sanctity of the laws, an immediate sense of the obligation which lies upon them to attend to the suggestions of enlightened and experienced Judges, whom they are accustomed to venerate, and an awful remembrance of their responsibility to their country, when they are sworn to protect it against the disturbers of the public peace—*these*, I think, will in most cases supply motives strong enough to put them on their guard against excessive compassion—against deliberate negligence—against gross partiality.

The arguments suggested by Dr. Paley may, I think, be adduced with more propriety in consoling the sufferer, than in vindicating his Judges, and doubtless, *such* a sufferer ought to be supplied with every reason, which sound morality can furnish for the mitigation of his sorrows. But as human nature is *usually* constituted, what I would ask, is likely to be the effect of such arguments on his mind? If he be a man of feeble intellect, or confined education, can it be imagined that the immediate and exquisite sense of the wrong done to him will be soothed by the consideration that "certain rules of adjudication must be pursued, "and certain degrees of credibility must be accepted in "order to reach criminals"—that all human institutions are imperfect—that Judges, and juries are not infallible—that partial evil is inseparable from public good—and that this good is effected for the benefit of many other men by the very same laws under which he is himself suffering undeservedly the sharpest evils? Men of deep reflection and very stout courage *may*, in a few instances, so reason. Socrates * *did* reason so, and by the *singularity* as well as the manliness of his conduct, has commanded the admiration of all succeeding ages. Examples yet more sacred might be urged with effect at a season, when upon the approach of death,

* See the Crito of Plato.

the human heart is most susceptible of religious impressions. To a very enlightened man, who thought himself unjustly condemned, I had myself occasion to state the principle laid down by Dr. Paley, and to enforce it by the examples just now mentioned; and I pressed them with so much earnestness, as to prevent an act of suicide which my unhappy friend had determined to perpetrate on the morning of his execution. "Memoriam quoque ipsam cum voce "perdidissemus, si tam oblivisci in nostra potestate esset, "quam tacere *." That silence I have hitherto preserved upon an event most afflictive to my soul, and I have now found a proper opportunity for breaking it.

Whatsoever may be, and whatsoever ought to be, the efficacy of Dr. Paley's reasoning to produce resignation in the breast of an innocent sufferer, most unbecoming and most perilous it were for legislators and Judges to make it a subject of *habitual* reflection to themselves. The frequent recollection of it tends not only to diminish their sensibility, but to relax their caution. It may teach them to forget, that the *misfortune* incurred by the individual, and as I shall always add, the *wrong* done to him, may have *other* consequences than the destruction of *his* life. The discovery of his innocence may lessen the respect of mankind for those laws which are intended to be "a terror "only for evil works," and *must* disturb the confidence which every man reposes in his own innocence. Every man is exposed to rashness or malignity in false accusers—to erroneous or malicious inferences from his general conduct —to prejudices † against his temper, his manners, his em-

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* Vid. Tacit. in Vita Agric.

† "Plerumque innocentes recenti invidiæ impares." (Tacit. Annals IV. Par. 18. Edit. Lips.) The history of every country would, I suppose, supply numerous instances of persons, "Quibus, in Causæ dictione, magis quæ extra quæstionem erant, "nocuerunt, quam innocentia sua opem tulit." (Valer. Max. lib. viii. cap. 1.)

ployments, his religion, his party, or his family. Every man may from unseen and uncontroulable events be thrown into circumstances, which furnish strong presumptions of guilt. Almost every man *has* suffered unmerited reproach upon grounds not less probable than those which in a court of judicature might affect his life. It is therefore dangerous to *familiarise* the belief of Dr. Paley's argument to witnesses, or juries, or Judges; and the portion of truth which it may contain is a very inadequate compensation for the shock it would give to the general feelings and judgment of mankind. Most fallacious, also, is it to contend, that the question lies between the individual only and the community. Every *other* innocent man, as I have before remarked, is interested in the acquittal of one innocent party; and by the destruction of one innocent party, every member of the community is molested in that sense of personal security, which is classed among the choicest blessings of society, and among the noblest ends which the laws themselves are intended to promote.

" Erit intactis quoque cura
" Conditione super communi*."

From defects in the evidence, quirks in law, reluctance in prosecutors, or misplaced tenderness in juries, offenders are sometimes acquitted; and though it be known that they are likely to return to their vicious courses, the public mind is rarely much incensed, or much alarmed, at their escape. In cases of common robbery, the magnitude of the punishment is compared with the seeming lightness of the offence, and we are content to absolve offenders, not lest they should suffer at all, but lest they should suffer too much. In cases of murder, the certainty and just severity of the punishment are compared with the imperfections of the evidence, and we are slow to condemn. But shall it be said that we are

* Vid. Horat. Ep. I. lib. ii.

therefore careless about the authority of the laws which protect our liberties and our lives, and that we allow *every* suspicion of danger to prevail over *every* rule of adjudication and against every degree of credibility? If our caution in convicting men whose guilt was not wholly improbable is approved by the general sentiments of those who have the deepest interest in restraining their crimes, who shall set bounds to our indignation when the *want* of such caution has exposed an innocent man to a most painful and ignominious punishment?

Who that is anxious to obtain redress for the evils which arise from the acquittal of guilty men would not seek it, if it were possible, in *other* rules of adjudication and in other degrees of credibility, rather than in those which may involve the innocent with the guilty? If such redress by such means be unattainable, let us deplore the imperfections of human justice—But let us *beware* of discouraging that caution and that tenderness which seem to me most salutary in preventing men from being even unknowingly the destroyers of the innocent.

It is not easy to restrain the eagerness of ingenious men to improve upon supposed discoveries, or to control their fondness for apparent consistency in the application of a favorite rule to circumstances which did not present themselves to the mind, when the grounds of that rule were originally approved. They profess, perhaps, in the heat of controversy no more than they at the moment believe—But they will stoutly vindicate far more than they would deliberately practise, and their arguments laying hold on the vanity or credulity of weaker men, may have a more powerful influence, than their example. Zeno held a very high rank among the "doctores Sapientiæ, qui nulla bona nisi "quæ honesta, nec mala nisi que turpia judicabant*." Yet of Zeno we read, that when urged by some alarming consequences of his own hypothesis, he avowedly main-

* Tacit. Hist. lib. iv. Par. 4.

tained the harmlessness of some crimes most shocking to our nature*." Persons amongst ourselves might be found, who sacrificing their benevolence to their acuteness, would theoretically push Dr. Paley's principle to an extent to which it is not *expressly* carried by himself. They might say that the comparison lies, not between one innocent man and ten or fewer guilty men, but between *any* number of innocent men who suffer death, unknowingly to those who try them, and *that* number of guilty men whose merited punishment *on the whole* produces more good to the community, than the unmerited punishment of the others produces evil. They might contend that the same rules of adjudication which may have caused even ten times ten innocent men to be put to death, form a part of those laws " which by " their general effect and tendency uphold the welfare of " the community," and that upon many occasions they *had* " reached the crimes with which the public are in- " fested." He that is embarrassed or affrighted with such a conclusion would do well to investigate the premises on which it is founded, and to take care lest his caution in particular cases should be lulled asleep by considerations of public utility, which in my opinion have been applied to one side of the question only.

In opposition to Dr. Paley's general position, then, that the popular maxim *cannot* be maintained, I shall always respectfully, but firmly assert, that for every *practical* purpose it *can*.

The *rarity* of the case may make us inattentive to the unsoundness of the reasoning, and forgetful that the very same circumstance of rarity proves not only the *general* efficacy and general equity of those laws which uphold the general welfare of the community, but the absence of any *real* necessity to secure that efficacy, by controverting a maxim, which, in point of fact, is seldom or never abused.

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* Vid. Sext. Empir. Comment. lib. x. et hypotypos, lib. i. de octavo modo et lib. iii. cap. 24. v. 25.

Upon a subject so momentous I will not employ the Sorites of logicians, nor " demens unum item et unum*" will I enquire, whether it be on the whole better for one innocent man to suffer, or ten, or five, or two guilty men to escape? The heart of man shrinks at first from grave calculation. But if the appeal were made to experience, the question might be decided on the very same principle of proportion which Dr. Paley has introduced. Let us then suppose that in the assizes of any one year ten innocent men were put, and afterwards known to be put to death, in order to sustain such rules of adjudication as prevented the escape of a hundred guilty men. The magnitude and simultaneousness of the evil would, I am sure, excite immediate and universal alarm. The public voice would be raised for some alteration in the degrees of punishment or the rules of evidence. The safety of innocent men would be purchased even at the hazard of diminished security from the depredations of the guilty. I believe, too, that the anguish which our venerable Judges must suffer from such a number of events would efface from their minds the ingenious reasoning of Dr. Paley, and induce them to co-operate with the legislature in preventing the recurrence of similar wrongs and similar misery.

They would be solicitous to *lessen*, though it might not be in their power wholly to avert, the dangers which spring from the mere possibility of confounding the innocent with the guilty. They would pursue such rules of adjudication, and assist jurymen in forming such right intentions and right judgments, as should leave the meanest subject in the *least possible* peril of being " unknowingly sacrificed."

No principles of judicature, as Dr. Paley admits, can require that such a misfortune as capital punishment should befall an innocent man with the knowledge of those who expose him to it; and indeed human nature revolts from the contrary supposition. The laws, I should also admit, would be substantially and extensively useful, though such

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* Hor. de Arte Poet.

punishments were now and then inflicted unknowingly. Dr. Paley is anxious to vindicate them *when* they are so inflicted—I am solicitous to prevent them, if possible, from being inflicted *at all*, and I also think, that the old maxim which Dr. Paley resists, is a most powerful and salutary mean of such prevention.

Has the popular sentiment, I would ask, such an influence upon the official conduct of men who try capital offences, that in order to make them understand the usefulness of laws, and assist in supporting it, they should be disturbed in their belief of such a principle as is likely to avert the frequent recurrence of cases in which the innocent would share the fate of the guilty? Amidst the acknowledged and the experienced efficacy of public justice, would there be any *real* danger of that *universal* confusion which Dr. Paley describes, or even of a growing disregard to the laws which prevent it, if according to the actual or the probable number of such cases, we should let ten men who are probably guilty escape, lest one man who in our estimation at the moment is possibly innocent, should suffer? Is there not danger that unmerited condemnations would be multiplied, if men should be weaned from their attachment to a rule which is rarely called into direct action, and which, if so called, produces the advantage of justice to one party, with more or fewer inconveniencies arising from the relaxation of judicial rigour towards ten? Are the inconveniencies from a contrary process counterbalanced to the individual, by the consideration that he falls for his country, or to the community, by *clear and decisive proofs* that his country *could* not be protected by *any* other alternative than his death? The wisdom of the sufferer could not be much impeached by his doubts upon the validity of the justification proposed to him. The morality of the spectators is more likely to be improved by their sympathy in his sorrows, than in his patience. The interests of society would not be very materially injured by the escape of ten guilty men as the *condition* of safety to one innocent man. Even in crimes *not* punished with the rigour of death, there is

some violation of the laws "which uphold the welfare of "the community." There is some "interruption of the ge- "neral security"—there is some tendency to produce in part that "universal confusion" of which Dr. Paley speaks—there is a visible necessity for some "restraint from the "dread of punishment"—there is some actual, though imperfect, restraint from that dread. But as all those crimes have more or less of all those malignant properties just now mentioned, would it therefore be right to make those restraints yet more effectual by extending the penalty to death? Blackstone teaches me to "expect a better reason than the loose "one which is generally given, that it is found by "former experience that no lighter penalty will be effectual;" and he farther tells me, that "though the end of punishment "is to deter men from offending, it never can follow from "thence that it is lawful to deter them at *any* rate, and by "any means, since there may be unlawful methods of en- "forcing obedience even to the justest laws*."

If then the security of the community is not incompatible with the imperfect operation of penalties less than death, would it be very extensively endangered, if ten guilty persons were permitted sometimes to escape, lest one innocent man should suffer? Would there be any distinct vestiges of the frightful *competition* which Dr. Paley mentions, between the safety of one innocent man purchased by impunity to ten guilty men on the one hand, and the general authority and usefulness of the laws on the other hand? Would the usual rules of adjudication be *no* where regarded? Would the usual degrees of credibility be *no* where admitted? Let us then beware of reasoning confidently and indiscriminately from *partial, obscure,* and very *remote tendencies* to obstruct the course of those rules, and to perplex the degrees of that credibility, when we are in quest of arguments to

* Book iv. cap. 1.

bring our humanity into subjection to our acuteness, and to discover palliatives for an evil so *very great*, though it be not very frequent, as the destruction of an innocent man. Crimes *will* be hated—criminals will be feared and watched —punishments will be inflicted, and bad men will continue to be deterred by them, though jurymen and Judges should be disposed to act in conformity with the *real* import and real spirit of the principle which Dr. Paley has opposed. The guilty men who now escape, rarely owe their acquittal to a full conviction of their innocence, but to such doubts upon it as are suggested by the magnitude of a punishment which in many cases exceeds our notions of proportion between crimes and penalties; and by an uneasy feeling that we who condemn, expose an offender to more rigour than in our apprehension he deserves. But the evil arising from their acquittal might be diminished by a change, not so much in the rules of adjudication, as in the degrees of a penalty, which if mitigated would be more likely to be inflicted.

The actions of men plainly shew that their judgments will not bend down to the dogma of Cato the Censor. "Hominem improbum non accusari tutius est, quam ab-"solvi *." His acquittal may have been effected with extreme difficulty, which other men will observe, though he should not feel it. A small change in the colour of facts, or the bearings of testimony, may exclude him from being acquitted again, if he should again offend. The remembrance of a former offence nearly proved will lessen his chance for mercy, after he has been fully convicted. But if for the same purpose of bringing condemnation on the guilty, Judges were to insist upon the same general topics for which Dr. Paley contends, we seldom could listen to them without disapprobation, especially if it should appear, that in consequence of such topics having been introduced

* Livy, lib. xxxiv. par. 4.

and sanctioned * by such high authority, the scruples of jurymen had been vanquished, and the sentence of death had been passed and executed upon persons, who, after the *misfortune*, as Dr. Paley calls it, were found to be innocent. But if it were known that an innocent man owed his escape to the same caution which had operated in favour of the guilty, even the speculative conviction we might have upon those topics in our closets, would in a court of justice be practically overpowered by an instantaneous and lively sentiment of approbation.

If in *reality* guilty men *seldom* escape, lest the innocent should suffer, the popular maxim does no great harm. But if innocent men *often* suffered, lest the guilty should escape, the absence of that maxim would be most injurious to individuals, and most alarming to the community. Again, if guilty men should often escape, lest the innocent should often suffer, great danger, I grant, would arise, and great alarm. But the frequency of either of the two last cases would produce the same happy effect. In consequence of our fears that the guilty would injure ourselves, and that we should ourselves be the authors of injury to the innocent,

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* I put a case not very likely to happen in our English courts. But if it ever should happen, the same feeling might be excited against the Judge, which the brutal language of an accuser once provoked: "Quintus Flavius Augur à Caio Valerio "ædili ad populum reus actus, cum quatuordecim tribuum suffra- "giis damnatus esset, proclamavit *se innocentem opprimi.* "Cui Valerius æque clara voce respondit, *nihil sua interesse* "*nocensne an innoxius periret, dummodo periret.* Qua vio- "lentia dicti reliquas tribus adversario donavit. (Vid. Valer. Max. lib. viii. cap. 1.)

The Roman tribes had no partiality to Flavius, nor were they indifferent to the offence charged upon him. But they thought it better to curb the savage spirit of the accuser, than to punish the probable guilt of the accused.

our present rules of adjudication would be carefully revised, and some expedients would be contrived for making the future punishment of the guilty more compatible with the future safety of the innocent.

That Being who foresees and controls all events, may permit, and (with the *deepest reverence* be it spoken) may even ordain evil, "that good may come." But great, indeed ought to be the probability, and great the quantity of good—obvious, too, and most imperious ought to be the necessity of obtaining it, *before* such a creature as man knowingly runs the smallest *hazard* of committing *such* a mistake as subjects the innocent with the guilty to the loss of life—Before he pleads his own ignorance and imbecillity in vindication of a measure against which the *previous consciousness* of that ignorance and that imbecillity should have put him most strictly upon his guard—Before he assumes that the general good as intentionally produced by himself, will in all cases or to every extent compensate the particular evil unintentionally inflicted by himself—Before he presumes to treat lightly the possible aggravations of that evil, from repetition facilitated by precedent, or from general inquietude excited by general insecurity—Before he forgets, that the general usefulness and authority of the laws are experimentally known to be maintained, though from error or even design certain rules of adjudication are not in *some* instances pursued, and certain degrees of credibility are not admitted—Before he allows that they could *not* be maintained, if ten guilty men were *sometimes* to escape, lest one innocent man should suffer—Before he believes that they *could* be maintained very long, if one innocent man *often* suffered, lest ten guilty men should as often escape.

The remote possibility of such a case as I have been now considering, supplies an additional reason against the multiplication of capital punishments. If the penalty were less than death, there would be room for some compensation to the feelings and the secular interests of the party when his innocence was known; and who shall say that

continuing to exist, and standing upon the watch to avail himself of every favourable opportunity for discovery, he is not the likeliest person to search for every kind and every degree of proof by which that innocence can be established? Much may be done by the zeal and activity of his friends or his family. But in time, place, and many other circumstances of action there are innumerable particulars which the agent alone is able to explain, and of which he to-morrow may give an explanation more satisfactory than could be given to-day. When an innocent man has been condemned to die, we must prove that according to the established degrees of credibility in evidence, there arose strong probability of his guilt. Hence, guided by the same principle upon which I have been reasoning, Beccaria has proposed such an expedient as seems to me far more equitable than the sentence which Dr. Paley would permit to be executed, when in the view of a court of judicature, there is " a mere possibility" of innocence. " Banishment," says Beccaria, " should be the punishment " of those, who being accused of an atrocious crime, are " probably, but not certainly guilty." For this purpose would be required a law, the least " arbitrary, and the " most precise possible, which should condemn to Banish- " ment those who have reduced the community to the " dreadful alternative, either of fearing, or punishing them " unjustly: still, however, leaving them the sacred right of " proving their innocence *." Such a law well-administered would avert from the accused a grievous wrong, and give to the community all necessary security.

" That moral certainty which excludes the possibility " of innocence, and which determines every man in the " most important transactions of life, is," I grant, with Beccaria †, " only probability;" and I would farther grant, that the imperfect proofs by which the innocent might clear himself, but *does* not, become perfect, by which I under-

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* Cap. 25. † Cap. 14.

stand, the best adapted under certain circumstances to a certain end. But as even under those circumstances they sometimes answer ends the very contrary to those for which any evidence is admitted, or any laws are made, the utmost care should be taken to prevent such a contingency, or to alleviate the effects of it when it occurs. Evidence can seldom or never amount to certainty. But the punishment inflicted on account of evidence, *is* a real and a certain evil to the sensibility of a sufferer, and in the view of a Judge. And therefore we cannot be too cautious in inflicting that evil which in the estimation of legislators is greater than all others, and which beyond all others is irreparable.

The subject I have been now considering may be most usefully illustrated by the remarks of Mr. Bentham upon remissibility as a property of punishment. "The general "presumption," says this great writer, "is that when pun- "ishment is applied, punishment is needful: that it ought "to be applied, and therefore cannot want to be remitted. "But in very particular, and those always very deplorable "cases, it may by accident happen otherwise. It may "happen that punishment shall have been inflicted, where, "according to the intention of the law itself it ought not "to have been inflicted: that is where the sufferer is inno- "cent of the offence. At the time of the sentence passed "he appeared guilty, but since then accident has brought "his innocence to light. This being the case, so much of "the destined punishment as he has suffered already there "is no help for. The business is then to free him from as "much as is yet to come. But is there any yet to come? "There is very little chance of there being any, unless it "be so much as consists of chronical punishment: such as "imprisonment, banishment, penal labour and the like. "So much as consists in acute punishment, to wit, where "the penal process itself is over presently, however perma- "nent the punishment may be in its effects, may be con- "sidered as irremissible. This is the case, for example, "with whipping, branding, mutilation and capital punish- "ment. The most perfectly irremissible of any is capital

" punishment. For though other punishments cannot, " when they are over, be remitted, they may be compensated " for: and although the unfortunate victim cannot be put " into the same condition, yet possible means may be found " of putting him into as good a condition as he would have " been in if he had never suffered *."

Dr. Paley † contends that " the proper end of punish- " ment is not the satisfaction of justice, but the prevention " of crimes; and that prevention, which is the cause and " the end of that punishment, ought also to regulate its " severity." Such is the opinion also of Beccaria, when he tells us ‡ that " though punishments be productive of " good, they are not on that account just, but that to be " just they must also be necessary;" and that " all punish- " ments which exceed the necessity of preserving justice, or " that bond which is necessary to keep the interests of indi- " viduals united, are in their nature unjust §." Though Dr. Paley professes not to enquire in what sense, and seems to doubt whether with truth in *any* sense justice may be said to demand the punishment of offenders, I have little difficulty in understanding what is meant in popular discourse by the satisfaction of justice. But I disapprove of the principle contained in the phrase, and I consider the phrase itself as an instance of the confusion introduced into moral reasoning by the use of metaphor and personification. " Cautious," says Beccaria, " should we be how we asso- " ciate with the word *justice* an idea of any thing real, such " as a physical power, or a being that actually exists." So far, however, as the word implies the retribution " of " so much pain for so much guilt," I readily allow with Dr. Paley " that the demand of such retribution is not the " motive or the occasion of human punishments."

The example of Dr. Paley in contrasting the justice of man with that of the Deity, will, I hope, warrant me in

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* Bentham's Introduction, chap. xv. on remissibility.

† Chap. ix. ‡ Cap. 25. § Cap. 2.

stopping here to observe that I do not in all respects assent to the distinctions which that excellent writer has made between them. It appears to me that so much pain inflicted for so much guilt *unexpiated by repentance*, would have been a proposition more correct than that which he has employed when he is speaking of the Divine justice. The conceptions of that attribute which our views of the moral world suggest to us, and the conscious limitation of our own foresight and our own strength, should, I grant, teach us to reason with great caution and great reverence from the judicial dispensations of the Deity to human laws. I cannot, however, dissemble that the representations which Dr. Paley has given both of Divine veracity and Divine justice appear to me, I do not say erroneous, but defective. Upon the former we must argue from the light of natural religion, and upon the latter we must appeal to the evidence supplied by revelation. Now, if justice requires that so much pain be inflicted for so much voluntary guilt, it seems also to require that so much pain should not be inflicted after so much expiation made for guilt by voluntary amendment. If the veracity of the Deity requires him to punish offenders, because he has "*promised*" so to punish them, it must also require that a part, or the whole of their punishment should be remitted to penitence, because he has likewise promised to accept their sincere and active endeavours to repent. "In the sight of the Deity that "repentance may not only be a bridle to prevent the sinner "from going astray, but a spur* to make him advance with "more speed in the road to perfection." In the sight of the Deity that repentance may amount to a complete change of all the immoral propensities or habits which exposed the offender to punishment, and it may ultimately render him a fit subject even of reward. Man, it is true, cannot so penetrate the hearts of his fellow-creatures as to calculate

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* See Pistorius's Notes upon Hartley, p. 621, in the quarto edition of Hartley.

the good effects wrought in them by remorse, and even if he could calculate them, the necessity of deterring other men from similar offences would often compel *him* to punish more or less, where the Deity may have forgiven. Still, however, it is of importance for us to remember, that the mercy of that Deity is much oftener recommended to us as a model of imitation, than his justice; and though precepts of this kind may be considered as chiefly applicable to the conduct of private individuals, yet the principles upon which they are founded deserve to be regarded by legislators so far as they *can* follow them consistently with the common weal. It is, indeed, a salutary, an essential, and even characteristic quality of justice itself, that, in providing expedients for the public security, it should be wholly exempt from that vindictive spirit which obstructs the exercise of mercy. Great I know to be the authority of Dr. Paley's name, and therefore I am anxious to guard his opinions from the possibility of abuse and perversion by men, who would rashly argue "as we cannot be like the Deity, it sig-"nifies little how much we are unlike him."

Prevention, as vindicated and illustrated by Dr. Paley, is, I allow, the *chief* end, and therefore ought to be the chief "measure of human punishment." I do not, however, chuse to call it the *sole* end, because *where* punishments *can* be so administered as to correct the offender himself, as well as to deter other men, Dr. Paley I am sure would have approved of them as suited to this *additional*, though subordinate purpose. He would farther have admitted, that punishments as well as crimes, are *evils*, and that, whether inflicted by man or by the Deity, they must have good for their ultimate object, before we could pronounce them to be just. But that "so much pain should be inflicted for so "much guilt," resembles the *lex talionis* of fallible and vindictive man, rather than the measures of a perfect being. Justice in the Deity must bear some resemblance to justice in man. It cannot be supposed to accumulate the evil of

punishment upon the evil of crime without some ulterior purpose, and if that purpose be called the satisfaction of the Judge who punishes, we may still contend that this very satisfaction itself must be founded upon the good which punishment at some time or other, and in some degree or other, will produce to some sensient being or other. It is difficult to conceive how the administration of Divine justice in future punishments, should operate by example; and it struck me very forcibly, that Dr. Paley has not given the slightest intimation of their tendency when inflicted, to correct offenders themselves. Perhaps, upon this point he did not see any immediate necessity for communicating his own opinion. But as the comparison which he has introduced between the justice of God and that of man unavoidably turns the attention of every reflecting mind towards a subject most important to us, I feel myself not only authorised, but almost required to state my own sentiments; and happily for me, they have been expressed with the greatest clearness and precision by the acute and learned Pistorius in his notes upon Hartley*.

"The attributes of righteousness and justice if properly considered, are by no means so adverse to benevolence as might be inferred from the active satisfaction of the Deity in truth and order, and his equally active dislike to whatever departs from them. The most righteous and just ruler may also be the most benevolent, if he be the most powerful. His benevolence, it is true, would not be displayed in a similar manner to his dutiful and undutiful subjects: he would not reward the latter as the former; but his good will towards them would show itself in such dispositions and regulations as would render them equally obedient, and by these benevolent, though forcible measures, would he reveal his justice and righteousness, maintain the authority of his wholesome laws, and promote the well-being of his whole kingdom. He must punish; but his punishments

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* See the quarto edition of Hartley's Works, p. 597.

would be corrections. We may admit, not without grounds, that the distinction betwixt punishment and correction, the end of the former being to prevent the spreading of wickedness by warning and deterring others from it, and of the latter, to amend those to whom it is applied, is founded on the weakness of mortal rulers, and not applicable to God. Mortal rulers are not always able to punish in such a manner as to amend those on whom they inflict punishment. They cannot in the same action consult the private advantage of the individual, and the public benefit of the whole, so that they are obliged to distinguish the two, and for the general good, sacrifice the less to the greater. Both these ends, indeed, may be compatible with each other. We may so punish that the punishment may be a mean of reclaiming the punished, and at the same time prevent the spreading of vice by serving as a warning to others. Thus when we distinguish punishment from correction, this distinction will only hold, it appears, whilst we speak of human correction and punishment: since the distinction arises not from the nature of the things themselves, but from the weakness of mankind. Even amongst men a sovereign would unquestionably be deemed good, wise, and just, who knew how to punish so as not only to prevent transgressions, hinder the spreading of vice, and maintain order, peace, and security throughout his dominions, but likewise to amend the criminal himself, and render him an instrument of his own happiness, and an useful member of society, by the same punishment, which served as a warning to others. But if this cannot be done, and the sovereign by shewing kindness to a single criminal must do an injury to the whole community, in preferring the less to the greater good, being unable, from his limited power, to prevent the extension of vice, but by the sacrifice of the guilty; the idea of the justice of punishing, as a virtue in the sovereign, originates in his want of power; a justice, which, though beneficial to the whole, is a hardship to the party that suffers, and consequently not so perfect and good as it would be were it at the same time beneficial to society and to the offender. Let it not be supposed, that this inability to correct in every

case of punishment is so universal as to extend to God: it is proper to man alone, and proceeds from the following causes. We have not time, space and means sufficient so multifariously to diversify our corrections as to place the offender in as many various unpleasing situations as are requisite ultimately to bring him to a serious reflection on his real good, and permanent attention to it. We cannot render his punishment so intense as to make the desired impression upon him, without its becoming fatal. Finally, too, we are persuaded that certain offenders, particularly dangerous ones, must be punished with death, if we seek the security of society. Would slighter punishments serve in such cases, punishments that would not destroy the transgressor, but preserve him an useful member of society, no rational or well-minded man would justify capital punishments, but hold them equally pernicious and detestable. *We may even hope, that when the benevolent and more enlightened eye of philosophy shall have inspected that important part of legislation, the distribution of punishments, this will become less and less destructive, without being less efficacious, and be gradually converted into correction of offenders. Unless* we ascribe human weakness, and the shackles of humanity, to that all-wise and omnipotent God whose moral sovereignty over his intelligent creatures is not confined to the narrow limits of time, who has unnumbered, and to us inscrutable ways of leading his subjects to his purposes, who since they actually are, and must eternally remain dependent on him, can place them in such circumstances that his designs in them, and through them in others, must be accomplished, we are forced to allow, that with respect to him our distinction betwixt punishment and correction is inapplicable, and that *all* his punishments at least *may* be at the *same* time corrections. And since this may be, we ought from the perfection of his benevolence to expect, that *so it will be.*"

But to whatever extent I may differ from Dr. Paley's explanation of "a rule which befits the absolute and perfect "justice of the Deity," I think with him that "it is a rule

" which ought not without the greatest caution to be pur-
" sued by human laws," and that " the cause of human
" punishment appears to be chiefly founded in the necessity
" of preventing the repetition of an offence." It is how-
ever painful for me to reflect that in the pursuit of such
prevention human laws are often carried beyond the limits
of real necessity; and of this excess I will lay before you a
striking instance in which the possibly innocent were con-
demned to suffer death as well as the guilty.

When Virgil says of Rhadamanthus " castigatque au-
" ditque dolos*," he meant to adapt his words to the con-
venience of his verse, rather than to describe the real
order of events. But even if the words of the Poet were to
be understood literally according to their present position,
the rashness of mankind would supply us with a practical
illustration of them. In a book of travels which was writ-
ten by Dr. Edward Brown, the learned son of a more
learned father, Sir Thomas Brown, and to which Johnson
gives the praise of scrupulous and exact veracity, I met
with this striking passage: " Among the odd customs of
" Carinthia there is an old one delivered of this place (Cla-
" genfurt, the capital) that if a man were vehemently
" *suspected* of theft they hanged him, and three days *after*
" judged of the fact; if he were found guilty, they let his
" body hang till it be corrupted; *If otherwise, they took*
" *down the body, buried it upon the public account, and*
" *said prayers for his soul*†." Brown refers in the margin
of his work to Æneas Sylvius for the fact which he recorded,
and he evidently believed it. The Carinthians, it seems,
spared not the *possibly* innocent lest they should be annoyed
by the guilty, and the custom imputed to them was far more
cruel than that of the Danes, " among whom a person
" who was detected *flagrante delicto* and with the mainour,
" might be taken and hanged on the spot, without accusa-
" tion or trial‡."

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* Æn. vi. † See Brown's Travels, p. 123,

‡ See Blackstone, book iv. cap. 23.

Compelled as I am to differ from Dr. Paley in his opposition to a popular maxim, the merits of which I have endeavoured to unfold, I would not be understood to impute to this excellent man a criminal insensibility to the sufferings of his fellow-creatures; and it is with the highest satisfaction that I shall now produce from his works two proofs of his humanity. In chapter VIII. he speaks of the unanimity required in the verdict of juries, as "one of the peculiarities in the judicial constitution of this country which do not carry with them the same evidence of propriety that recommends almost every other part of the system." "Nevertheless," says he, "the effects of this rule are not so *detrimental*, as the rule itself is unreasonable. In civil suits, when the conference of jurymen with one another does not seem likely to produce in the jury the agreement that is necessary, they will naturally close their disputes by a common submission to the opinion delivered from the Bench." This practise no doubt corrects in part the unreasonableness charged upon the rule, and I state it for the purpose of contrasting it with another effect which Dr. Paley imputes to the same rule on another subject. "In criminal prosecutions it operates considerably in favour of the prisoner; for if a juror find it necessary to surrender to the obstinacy of others, he will more readily resign his opinion on the side of *mercy*, than of condemnation." Dr. Paley here puts a case which may shew the unreasonableness of the rule, but which, also, shews something more. A juror has no doubt upon the guilt of the accused. He finds it necessary to surrender his opinion to what he thinks the obstinacy, and I might think the conscientious firmness, of other jurors. He resigns his opinion on the side of mercy. Does Dr. Paley directly condemn such resignation? He does not. Does he advise that the jury, as in civil cases, should close their disputes in common submission to the opinion of the Judge? He does not. He produces the submission of him who would condemn to those who would acquit, as in *effect*, beneficial, indeed to the accused, but detrimental, perhaps, to the public, and

yet not *so* detrimental, as the rule itself is unreasonable. He would not call the effect detrimental at all, except in cases where the juror who surrenders is right, and they who resist and prevail over him are wrong, in their respective judgments on the accused—he must allow, that the presumption for truth is in favour of eleven as opposed to one—He must farther allow that in cases where the judgment of one juror is sound, and that of eleven is erroneous, the cause of that erroneous judgment may sometimes be wariness, rather than obstinacy, the cause of that sound judgment may be a previous disposition to severity rather than to lenity, and the rule, which suffers the wary to prevail over the severe, must be in its *general* effects *less* detrimental, than a rule with opposite tendencies. He, in truth, *has* stated the very circumstance of yielding on the side of *mercy* as making the rule *less detrimental*, though it be a rule in itself unreasonable. "Though there be less assurance that the verdict is founded in reasons of apparent truth and justice, than if the decision were left to a plurality or some certain majority of votes," still Dr. Paley has *not* proposed to remedy this inconvenience by leaving our decisions upon life in *criminal prosecutions* to such plurality or majority, however judicious a regulation of this kind may be in civil cases.

Again, Dr. Paley condemns "acts of attainder, of confiscation in bills of pains and penalties, and all ex post facto laws whatever, in which Parliament exercises the double office of legislator and Judge." He thinks that "whoever understands the value of the rule by which those offices are separated, or collects the history of the instances in which it has been invaded, will be induced to acknowledge that it had been wiser and safer never to have departed from it, and that nothing but the most manifest and immediate peril of the commonwealth will justify a repetition of these dangerous examples. If the laws in being do not punish an offender, let him go unpunished; let the legislature, admonished of the defect of the laws, provide against the commission of future

" crimes of the same sort. The *escape of one delinquent* " can never produce so much harm to the community as " may arise from the infraction of a rule, upon which the " purity of public justice, and the existence of civil li- " berty essentially depend*." I am aware of numerous and important differences between the case here stated, and that of an innocent man condemned by laws enacted previously to the crime with which he is charged, and not administered by those who enacted them. But let us remember, that the offence committed by the delinquent of whom Dr. Paley is speaking, is generally *more* malignant than that of common offenders—that his guilt is *assumed* by Dr. Paley—that the danger arising from the double office of legislator and Judge in those who are to punish him ought to have acted as an additional restraint upon him, and yet, that in the view of Dr. Paley his escape produces less harm to the community, than the infraction of a rule. I honour the wisdom, equity, and humanity of such a writer, and the remembrance of his intellectual and moral endowments makes it more painful for me to find him engaged in opposing the long-established maxim, " That it is better to the community for ten guilty " men to escape than one innocent man to suffer." If Dr. Paley had left this opinion unmolested, and if he had, also, ballanced the mischiefs of frequent executions, with their actual conveniencies, I should say of him as Cicero said of Cato: " Non is quidem vir sapientior fuisset, nec melior, neque " enim esse poterat; sed paullo ad lenitatem propensior †."

Let me now return to the debate on Sir Samuel Romilly's late motion. By the new statute private stealing may be accompanied by aggravations which subject the offender to transportation for life: and shall it be said again, as in the House of Commons it once has been said, that such punishment carries with it " a proclamation of impu- " nity?" That statute has the *peculiar* merit of *endeavouring*

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* Chap. viii. † Cic. pro Muræna.

to adapt a gradation of punishment to the gradation of malignity in crimes called by one common name. For my part, I welcome transportation as a *substitute* for death. But with the *general* properties of it as a punishment I am by no means satisfied. When offenders were first sent to North America "they went to a country where being unknown "they might not be very often reproached for their crimes, "where a little would maintain them, where their expences "would be moderately low, where the price of labour "was high, and where if a man reform, his reformation "would produce for him many comforts and convenien-"cies*."

But the system now adopted at Botany Bay, whatever may be its other properties, certainly carries with it a degree of severity rarely experienced by those who were formerly banished to our American colonies. The defects of it have been most clearly pointed out by Mr. Bentham, they have suggested to his active and sagacious mind a plan which in my opinion is likely to answer all the best purposes of punishment, both in correction and prevention: and the day I hope is not very distant, when the particulars of that plan will be submitted to the wisdom of Parliament.

"Exile," says Dr. Paley, "is in reality a slight pun-"ishment to those who have neither property, nor friends, "nor reputation, nor regular means of subsistence at "home†." This observation, I believe, to be sometimes just. Yet there may be cases in which it is difficult for us even in imagination *so* to place ourselves in the situation of the persons transported as to determine whether exile be to their sensibility a light punishment. They leave behind them relations, friends, scenes more or less endeared by early

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* See Smith's History of New York, quoted by Dagge, vol. iii. p. 177. † Cap. ix.

association, and a country, to which, in the midst of all their depravity they may retain some confused notions of attachment and duty. But if those notions are in all cases extirpated, would it be prudent to employ offenders, so often as they are employed, in the army and the navy?

Where Mr. Eden condemns the practice of hanging criminals for returning from transportation when it was "not in "the nature of a conditional pardon, but directed by po- "sitive law," he considers such severity "as an attack "upon the natural sentiments of the heart," and supposes that they to whom even parents, children, and relations may be no longer dear, are seldom so abandoned, as "patriam "non desiderare*." If, indeed, extirpation from the society of their fellow-subjects be a punishment so light, as Dr. Paley seems to think it, how shall we account for the eagerness of men to return to that country, where they must be conscious of having neither property nor reputation, and where the repetition of their former crimes must, as they well know, expose them to more rigorous treatment from the laws?

My objections to transportation as a punishment for private stealing, or indeed any other offence, are chiefly founded on a reason which has been forcibly insisted on by Dr. Paley and other writers. "It answers," says Dr. Paley, "the purpose of example very imperfectly. The sufferings "of a transported convict are removed from the view of "his countrymen, his misery is unseen, his condition strikes "little or no terror on those for whose admonition or warn- "ing it was intended." Beccaria also in chapter XIX. condemns the slavery of a transported criminal, "as an example "to societies which he never offended, an example absolutely "useless, because distant from the place where the crime was "committed."

In the debate upon the new statute imprisonment

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* Cap. 14.

was proposed, and circumstances were to determine whether it should, or should not, be accompanied with hard abour. But with the reasons assigned for imprisonment as a punishment I have always been dissatisfied; for "when "men are immured in a loathsome prison they are of no "service to society, and their sufferings are so secret as not "to operate on others by way of example*."

By the humanity of Sheriffs care is usually taken that the unavoidable miseries of a jail may not be aggravated by the unrestrained cruelty of the Jailor, and the expectations which Mr. Eden† formed from the industrious refinements of a sensible age, have been in part fulfilled by improvements in the airiness and extent of the buildings. But Mr. Eden agrees with Dagge in considering "imprisonment when "inflicted by law as a punishment, as not conformable with "the principles of wise legislation." He assigns the same reason, "because it cannot communicate the benefit of "example, being in its nature secluded from the eye of the "people." He further remarks that "it sinks useful sub-"jects into burthens on the community, and has always a "bad effect on their morals."

I am persuaded that no legislator would seriously vindicate the continuance of such a punishment as consistent with public justice or public utility, if his mind were strongly impressed with the luminous description which a celebrated writer has given of its effects. "The misery of "goals," says Johnson, "is not half their evil; they are "filled with every corruption which poverty and wickedness "can generate between them; with all the shameless and "profligate enormities that can be produced by the impu-"dence of ignominy, the rage of want, and the malignity of "despair. In a prison the awe of the public eye is lost, "and the power of the law is spent: there are few fears: "there are no blushes. The lewd inflame the lewd, the

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* See Dagge, vol. ii. p. 179. † Cap. vi.

" audacious harden the audacious. Every one fortifies " himself as he can against his own sensibility, endeavours " to practise on others the arts which he practised on him- " self; and gains the kindness of his associates by similitude " of manners *."

It is singular enough that the punishment for private stealing by hard labour, which has lately been proposed as one of the substitutes for death, seems to have occurred, though indistinctly, to the very legislators by whom the penalty of death was first appointed. By the statute of the VIIIth of Elizabeth this crime when committed *clam et secrete* was excluded from the benefit of clergy, and it is necessary for every indictment to contain those words in order to subject the accused party to capital conviction. Now this very statute in its preamble says, " that it is made to the " end that the fraternity or brotherhood of cutpurses and " pickpockets *may not continue to live idle* by the secret " spoil of good and true subjects. Does not then this pre- " amble itself seem to intimate that the proper remedy is to " oblige the criminal to hard labour †?"

My wish is that confinement should " *always* ‡ be ac- " companied with labour §," longer or shorter, lighter or heavier, according to the malignity of the offence. The

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* See Idler, No. 38. † See Dagge, vol. II. chap. x. Sect. 2.

‡ Dr. Paley says that " when jails are once provided for the " separate confinement of prisoners, the choice between solitary " confinement with hard labour and with nothing to do may " soon be determined by experience." I think that for the punishment of crimes which have endangered property it were better in all cases whatsoever to unite labour with confinement, and that acute pain should be added where the offence is in its own nature infamous, with diminished allowance for the produce of work.

§ See Dagge, vol. i. page 327.

last and highest degree of this punishment would, I am sure, be a most desirable substitute for many of the capital punishments which are now inflicted. It would be more terrible to offenders, and more salutary to society. "Perpetual slavery," says Beccaria*, "has in it all that is "necessary to deter the most hardened and determined, as "much as the punishment of death. I say it has more. "There are many who can look upon death with intrepidity and firmness; some through fanaticism and others "through vanity, which attends us even to the grave; others "from a desperate resolution either to get rid of their "misery or to cease to live. But fanaticism and vanity forsake the criminal in slavery, in chains and fetters, in an "iron cage, and despair seems rather the beginning than "the end of their misery. The mind by collecting itself "and uniting all its force, can, for a moment, repel assailing grief; but its most vigorous efforts are insufficient to "resist perpetual wretchedness." They who would shelter their dislike of chains under pretended lenity, may tell us "that perpetual slavery is as painful a punishment as death, "and therefore as cruel." But to such refinement Beccaria† has given a direct and invincible answer. "If all the "miserable moments in the life of a slave were collected "into one point, it would be a more cruel punishment than "any other; but these are scattered through his whole life, "whilst the pain of death exerts all its force in a moment. "There is also another advantage in the punishment of "slavery, which is, that it is more terrible to the spectator "than to the sufferer himself; for the spectator considers "the sum of all his wretched moments, whilst the sufferer, "by the misery of the present is prevented from thinking "of the future." After the commission of the crime "the "sufferer may indeed find resources and consolations of "which the spectator is ignorant." But the important

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* Chap. xxviii. † Ibid.

question with respect to an offender is, what effect the *expectation* of such punishment is likely to have upon his mind when "he foresees that he must pass a great number of years, "even his whole life in pain and slavery, a slave to those "laws by which he was protected; in sight of his fellow-"citizens with whom he lives in freedom and society. He "makes an useful comparison between those evils, the "uncertainty of his success, and the shortness of the time "in which he shall enjoy the fruits of his transgression. "The example of those wretches continually before his "eyes, makes a much greater impression on him than a "punishment, which, instead of correcting makes him "more obdurate."

You will not forget the apology I offered for appealing to the authority of celebrated writers in the defence or illustration of my own opinions. Many of their observations I had been fortunate enough to anticipate. But the clearness and precision of their language deterred me from employing my own. The same sentiments will naturally occur to men of reflection when they are contemplating the same subject, and as the pursuit of truth is more worthy of an ingenuous mind than the affectation of originality, we may reasonably suppose that some of the writers whom I have quoted, had availed themselves of all the assistance they could derive from the labours of their predecessors. If the principles for which they contend be founded in justice, and useful to society, I shall never be ashamed of my readiness to adopt, or my solicitude to disseminate them. Truth opposed to prejudice, reason to usage, and humanity to rigour have many difficulties to encounter. But every advocate not grossly unskilful gives additional weight to their claims, and may hope for attention from the candid, though he should fail of impressing conviction upon the inconsiderate or the unfeeling.

The opponents of Sir Samuel Romilly laid great stress upon the number of offenders who are guilty of "larceny "from the person;" and to their arguments I shall reply, what impartial enquirers must often be disposed to say on

other occasions, " nec nihil, neque omnia *." They who admit the same premises are not always led by them to the same conclusions, and in the discussion of moral questions it often happens that difficulties arise, not upon the truth of a general principle, but upon the degree in which it is applicable to particular points of practice, and upon the purposes for which it ought to be controuled by other principles, equally comprehensive, or equally sound.

That the frequency of an offence is sometimes a solid plea for enforcing and even enacting severe statutes, will, as a general proposition, not be denied. And the utmost which a man of reflection would require is, that when such frequency has been long and considerably checked, such severity should be proportionably relaxed †. You avowedly did not employ death, till criminals were numerous—you should have ceased to employ it, when they became fewer—you may resume it, when they become numerous again.

Whether it be possible for some kind of small offences to be so frequent as to justify capital punishment for the prevention of the aggregate mischief produced by them is, also, a general question, upon which good men will pause, before they decide in the affirmative. In my view of the subject,

" Mores sensusque repugnant,
" Atque ipsa utilitas justi prope mater et æqui ‡."

The number even of small crimes may render their tendency very dangerous. But would that tendency have

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* Terent. Adelph. Act i. Sc. 2.

† The principle of such relaxation is well stated by Valerius Messalinus. " Placuisse quondam Oppias leges, sic et tempo-
" ribus reipublicæ postulantibus; remissum aliquid postea, et
" mitigatum quia expedierit." (Tacit. Annal. lib. iii. par. 7.)

‡ Hor. Satyr. iii. lib. 1.

induced Blackstone to retract or qualify his position, "That it is not the frequency only of a crime, or the diffi- "culty of otherwise preventing it, that will excuse our "attempting to prevent it by a wanton," and, as I would say, unnecessary, and therefore unjust "effusion of human "blood?" Smaller crimes are, from their very nature, most likely to be frequent, and many who commit them may make a jest of the light punishments denounced against them. But shall it be said, that their severity therefore must be *indefinitely* increased? "Is it not obvious," says Mr. Dagge, "that if punishments are to be increased on "this account, they might be aggravated till all small crimes "are made capital? But such a system of legislation as "this reasoning tends to establish, would indeed breathe the "true spirit of Draco's laws *."

In a theological book I once met with an elaborate defence of certain principles, according to which a school-boy incorrigibly mischievous in robbing orchards, would be deservedly tormented in hell fire for ever and ever. The writer was a good-humoured, wrangling, conceited visionary, who would have disdained to shrink from the legitimate consequences of a favourite hypothesis—who hungered and thirsted after mysteries in religion, and paradoxes in philosophy—who clung to old opinions, merely for the sake of displaying the new light which he fancied himself able to throw upon them—who with mingled pity and contempt prattled about Newton as a star-gazer, Locke as a sciolist, and Dr. Clarke as a zany; and who would have spurned at the decisions of Nominalists and Realists, of Aristoteleans and Rameans, of Convocations and Conclaves, of Universities Protestant and Catholic, and of Councils general and œcumenical, when opposed to his own ingenuity in vindicating and illustrating his own discoveries. Fortunately for his species he was doomed only to talk about matters, in which he had no power to act, and his extraordinary zeal

* Vol. i. p. 259.

became at once ridiculous and harmless from his extraordinary absurdity.

As to Sir Samuel Romilly *, who in all probability has more sense, as well as more tenderness, than our sturdy theologian, I honour him for his noble effort, I anticipate the happiest effects from the example of his success, and I suppose that his reputation will not descend to posterity with much less advantage than that of other contemporary sages, whose names, somehow or other, are invariably associated with every mention and every recollection of those stricter ordinances which it has been their good pleasure to recommend to the legislature. I dispute not the rectitude of their intentions. I admire their abilities. But I have no ambition to partake of their celebrity, because the times in which I live present other objects for emulation, such, at least, as I should be likely to feel.

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* Hitherto he has not been scared by shallow and fretful declaimers, who maintain, "una si lex tollatur, cæteras infirmari;" and though he would readily admit, "nullam legem satis commodam omnibus esse: id modo quæri, si majori parti, et in summam prosit," (See Livy, lib. xxxiv. Par. 3.) yet I trust that he will persevere in his endeavours.

The same observation has been made by Hale: "if a law be squared, so that it is fit ad plurimum, and doth more good than harm, though it possibly pro nunc et tunc may do some harm, yet it is a good law." (Cap. 2, on the Amendment of the Laws.) Sir Samuel Romilly is eminently qualified to ballance the harm and the good, nor will he suffer any insidious or dogmatical application of Hale's remark to deter him from stripping our Penal Code, so far as he can, of all unnecessary severities—He will keep in view, the least probable harm, and the greatest probable good.

The activity of Sir Samuel Romilly will preserve the lives of my fellow creatures. The perseverance of Lord Erskine in giving precision to the Law of Libels has added fresh security to the liberties of my countrymen. Both of them are most distinguished ornaments of a most useful profession, and the liberality, fortitude, and benevolence of both must tend to rescue in some measure that profession from the odium of an imputation, which the subject I am now treating recals to my mind.

It has been said that reforms, whether in the Church or in the law, are not to be expected from men who have risen to eminence in either, that secular emoluments and honours destroy their sensibility in the cause of virtue, and that their talents are always employed, rather in stifling enquiry, than in exploring and disseminating truth. This certainly is not a fit place for me to give an opinion upon what ecclesiastics might now accomplish with propriety, or upon what they ought to attempt from higher considerations of duty. But so far as the observation just now mentioned may be thought to bear upon the memory of their forefathers, it is in many respects unfounded. If we except the gloomy tyranny of Mary, and perhaps the troubled days of Charles I. and Cromwell, we shall see that reformation in the English Church *was* conducted, slowly indeed, but surely, from the reign of Henry VIII. to that of Charles II. when the angry conferences at the Savoy put a stop to all farther progress. In the articles, or in the public service of the Church, alterations, well adapted to the exigencies, or, it may be, to the capacities of the times, and fraught with the soundest wisdom and most genuine piety, were proposed and adopted by enlightened and dignified Ecclesiastics. The diffusion of knowledge and the advancement of civilization may be traced by vestiges yet more recent in another quarter. If we look to our civil code, we shall find that in the present age, and in others which preceded it, material improvements have been introduced into that code either by the *dicta prudentum* in our courts, or in Parliament by the suggestion, or with

the approbation and aid of learned lawyers: and it is with peculiar triumph that for the partial proof of this assertion, I can appeal to the freedom granted to slaves while they remain in England, and gradually effected by a series of judicious and humane decisions. But the penal code, I must acknowledge, still remains a soil in which

"Infelix lolium, et steriles dominantur avenæ*."

The harvest of rank weeds is abundant, and the "labourers" who should pluck them up "are few." Yet the discouragements to their labours in the amendment of our Penal Code are less numerous than those which present themselves to the reformers of abuses, real or supposed, in other quarters. Clear it is that the welfare of society is more immediately affected by inconvenient or rigorous statutes which strike at the life of man, than by doctrinal errors (if such there be,) which are more or less corrected by the diffusion of general knowledge, and sound criticism. It is probable, too, that the repeal of such statutes by Parliamentary authority would be less offensive to public opinion, than the interference of the state in theological tenets and ecclesiastical discipline.

There is indeed one subject upon which I have already expressed my wishes that the legislature would so far interfere, as to employ the public ministers of the church in giving increased notoriety and increased efficacy to our penal laws. I lately found with great satisfaction that Mr. Bentham has proposed an expedient similar to that which many years ago occurred to my own mind. "It is highly "necessary that at all times, and in particular immediately "after the passing of a new law, means should be used for "impressing the contents upon the minds of those whose "conduct is to be governed by it. But what measure so "simple or so effectual as to send by the post a copy to the

* Virg. Georg. I.

" ecclesiastical minister of every parish, under a general " order to read it to the congregation the next church day, " or the two next church days, *au prone*, immediately after " divine service* ?"

I know not the effect which Mr. Bentham's reasonings and statements produced upon the fluctuating body of legislators, to whom he addressed them, nor can I calculate the attention which may hereafter be paid to them under the form of government now established in France. But I am sure that in our own country, the regulation of which I am speaking might be introduced without difficulty, and continued without inconvenience.

Let us not be dismayed by positive assertions, nor amused by technical jargon, upon obstacles to that knowledge, the acquisition of which is necessary to the discharge of our social duties, and to the preservation of our innocence, our liberty, and our lives. Many are the complaints which I have heard from foreigners upon the inequalities and rigour of our penal code; and pained I was that Mr. Bentham when writing to a self-appointed and tumultuous assembly of legislators in France, should speak with exact truth of his own country in the following terms. " In " England the business of promulgation is a very simple " affair. In the body of every act of Parliament a day is " specified, in which it shall be considered as being in " force. Nothing is done to circulate it by King, or Judges, " or any body else: but a copy is given to the King's print- " ing office, where it is printed in an obsolete and obscure " type and inconvenient folio form, and sold, as may be " expected under a monopoly, at a dead price, and there " it lies for the use of any one that has money to spare to " buy it, and thinks it worth his while to do so. Every

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* See page 15 of Bentham's Observations on the Judicial Establishment proposed in France.

"man is then supposed to know and understand the "law *."

The facts above mentioned are equally notorious and lamentable. I leave it with other men to determine upon the accuracy of Mr. Bentham, when, speaking of persons who are supposed to know and to understand the laws, he says—"Juries excepted, who when they have taken upon them "to pronounce a man guilty of having violated the law, "are held not to have decided upon the law, it being im-"possible that they should understand it."

All the good ends of promulgation might be answered, if statutes recently passed were read in every congregation soon after the close of a session of Parliament, and if an abstract of the penal laws, including both the old and the new, were communicated in the parochial church of every county a sunday or two before the assizes. The expense of copies printed on a small type might be defrayed by the parishioners themselves, and it would not be very considerable, as new penal statutes are not passed every year.

With improvements in the promulgation of our laws is connected the use of such details, and, if possible, such terms as may render them intelligible to the bulk of the community. I adverted to this subject in page 329. But I think it is of such moment, and I see such little attention paid to it in general practice, that I shall venture to resume it.

If it be right to appoint well-educated instructors for explaining and urging those duties which the moral faculties of the mind most easily apprehend, and most readily approve, it must be equally right to guide their judgments, to refresh their memories, and to alarm their caution upon those arbitrary modifications of justice which are introduced by penal statutes—modifications which do not, and cannot present themselves to the unaided common sense of subjects—modifications, in the observance of which

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* Bentham's Observations, page 15.

the welfare of society is supposed to be deeply interested by the persons who framed them. We all know the force of present objects, and there is reason to think that even they who are too listless on the spiritual concerns of futurity, will seldom dare to be inattentive, if the conditions on which they are exposed to imprisonment, or exile, or death, were to be set before them at a season when the mind is unruffled by any selfish or unsocial passion, and in a place which is well adapted to awaken the most awful reflections. Will not the observation which every man has occasion to make upon local circumstances or personal character, recal to his thoughts more or fewer of the particulars which are contained in the penal code? Will not every serious hearer find opportunities for turning such and such a statute into a topic of conversation with his neighbours, and with his friends? Will not every master of a family be disposed to expatiate and insist in the hearing of his servants upon some point or other which has struck his own mind forcibly, or is connected with the bad propensities he has observed in those around him? Will not every parent be anxious to communicate to his children such instruction, and such warning, as may save them from infamy, from a dungeon, or from a violent death?

Pertinent and salutary topics never can be wanting to those enlightened men who might be employed in preparing that religious discourse, which, by the command of Diocesans, ought to accompany the public reading of the laws. With deference to my superiors I will take the liberty of mentioning one general principle, which it might be useful to illustrate and to enforce upon such an occasion.

I enter not into the political objections which a skilful disputant, by putting extreme cases, might successfully urge against the unqualified application of Bishop Berkeley's doctrine upon the duty of submission to government *.

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* See Bishop Berkeley's argumentative Sermon upon Romans, chap. xiii. verse 2, entitled The Christian Doctrine of not

But I am sure that the moral distinction which he points out between commands and prohibitions *, cannot be too

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resisting the supreme power proved and vindicated upon the principles of the Law of Nature. In the life of this excellent Prelate, published in London, in 1784, it is said that "in 1712 "the principles inculcated in Mr. Locke's Two Treatises of "Government seem to have turned his attention to the doctrine "of passive obedience; in support of which he printed the sub-"stance of three Common-places delivered by him that year "in the College Chapel, a work which afterwards had nearly "done him some injury in his fortune."

* I know not whether Bishop Berkeley had read Jeremy Taylor. Where Taylor is examining those laws of nature with which the Deity can dispense, he writes thus: "If all can be "dispensed with, the consequents will be intolerable: if not all, "by what are they to be separated, since they all seem to be es-"tablished by the bonds of eternal reason? Some say that the "precepts of the second table are dispensible, but not the first. "But that is uncertain, or rather certainly false, for if God did "please he might be worshipped by the interposition of an im-"age; or if he essentially should hate that, as indeed in many "periods of the world he hath severely forbidden it, yet the "second commandment, and the fourth, have suffered alteration, "and in some parts of them are extinguished. Others say that "the negative precepts are indispensible, but not the affirmative. "But this is not true; not only because every negative is com-"plicated with an affirmative, and every affirmative hath a ne-"gative in the arms of it, but because all the precepts of the "second table, the first only excepted, are negative, and yet "God can dispense with all of them, as I have already proved." (Taylor, book ii. chap. 1.)

Taylor in this place *confines* the power of dispensing either with the affirmative or the negative laws of nature, to the Deity, and therefore he supplies no rule for human action, except in those extraordinary cases in which the Divine will is communi-

frequently stated, nor too earnestly enforced. I add, that upon clear and sound principles of analogy much of his

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cated to us by express revelation. But in *another* part of his work, "On the Interpretation and Obligation of Christian laws," he states very clearly, and urges very forcibly, the distinction for which I contend, between affirmative and negative precepts for the conduct of life. See book ii. chapter 3, where he shews "*how far* in negative precepts the affirmative are commanded, "and in the affirmative commandments the negative are included. "Every negative does not presently infer every contrary affirm- "ative as a matter of duty. From a negative an affirmative is not "always inferred in a particular instance. From a negative law "the affirmative is drawn, but not with the same degree of "duty or necessity, because negligence in sins of omission is not "so bad as malice; but in sins of commission the cause is *always* "positive, and therefore always intolerable. The affirmative which "is inferred by the negative law of Christ is not absolute and un- "limited, like a negative, but modificated and limited by its "proper and extrinsic measures. To this purpose is that *known* "*rule*, that negative precepts *oblige always*, and to an *actual* "*obedience in all times*. But affirmatives, though they al- "ways oblige, yet they can be obeyed but in their own season. "So that although every negative precept is infinite and hath no "limit, yet the affirmative have extrinsic measures and positions "of their own, something to make them laws to me and you, "though the consequence of the negative is sufficient to make "them to be laws to all mankind. So that although negative "precepts may be mother of affirmatives, yet the child is a "dwarf, and not like the mother, and besides that, it is exposed "to be pursued by chance, and by circumstances, by strangers, "and all the measures of contingency." (Book ii. chap. 3.)

It is plain, that Taylor and Berkeley agreed in their general principles. If the opinions of Taylor were extricated from scholastic phraseology, and brought home to the apprehension and the conscience of a common audience, they might be introduced with

reasoning may be transferred from divine to human laws—those I mean in which certain actions are forbidden, and certain penalties denounced against the commission of them.

Commands admit many gradations of obedience. They sometimes depend upon external circumstances of opportunity, style, and place. They sometimes are, and from the nature of human affairs must be, left to the discretion of moral agents. They sometimes require such self-denial, or such magnanimity, as falls to the lot of few. They sometimes may be unobserved without positive mischief to society, or very heinous guilt in the offender. But comparatively few are the distinctions which can be applied to prohibitions. Thou shalt not steal—Thou shalt not bear false witness—Thou shalt do no murder—These are plain and peremptory rules, from which every deviation is declared to be criminal by the laws of God; and surely, when the laws of man interdict any action, it is of the highest moment to inform every subject from whom obedience is required, that every violation will expose him to some punishment; and in order to make the general impression *more* distinct, more lively, and more permanent, it must be of great use to inform him, yet farther, that to this or that kind and degree of violation, this or that kind and degree of punishment has been affixed by the authority of the legislature. The evil of ignorance may in many instances be great; but the remedy for it is obvious and easy. One short sentence, or even one member of a sentence, judiciously inserted, may suffice to point out to a fellow-creature the first approach of danger, and to rescue him from the snares of temptations hitherto unknown to him

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great propriety in a discourse upon the authority of human laws enforced by the sanction of human punishments.

by his experience, or hitherto unresisted by him in thought. To discern *all* the allowances which are to be made for ignorance is the peculiar privilege of a divine legislator. But it is the bounden duty of every human legislator to take the utmost possible care that no man whatsoever remain ignorant of that which they require him to avoid, and that which they have doomed him to suffer.

Though it be very useful to show men the path which has been prescribed for them by written laws, the work, I grant, would be done imperfectly, unless they be farther protected from other dangers, which may spring upon them from the ambuscades of interpretation.

"In the original and natural sense of the word interpretation," says Bentham, "*every* man not only has a "right to interpret the law, but is *forced* to do so, in as "far as he is bound to square his conduct by it. In the "technical sense, if the right of interpreting the law be"longs to any man, that man is a legislator, and a legislator "of equal authority with him that made it*." Now when controversies arise in the interpretation of written penal laws, they arise, as Paley says†, "upon contingencies "which the composer of the law did not foresee," or, I would add, upon ambiguities in the phraseology which cannot be adjusted without great sagacity, and "a memory "stored with long collected erudition." The liberty then "of applying the law, which is unavoidably in such cases "assigned to Judges, and which falls very little short of the "power of making it, carries with it an authority which "appertains not only to the conclusions which the court "delivers, but to the principles and arguments upon which "they are built." I believe, that English Judges generally *do* look beyond the case before them, and reflect whether the principles, maxims, and reasonings which they adopt

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* See Observations on the Draught of a Code, &c. page 19.

† Chap. viii.

and authorize, can be applied with safety to all cases which admit of a comparison with the present. The decision of a Judge may be wise and equitable, and being once made, it will necessarily have the force of precedent in the trial of future offenders. But as the bulk of mankind cannot be supposed to understand our penal law in the sense which had not been *previously* affixed to it by the Judges themselves, I think it *very* unjust that an offender who stands condemned in the first instance of interpretation, should suffer death. Though the *mens mala* by which he was actuated may be evident, yet he cannot be accused of having intentionally violated a law which in truth was not understood by himself, or by other men. But I fear that upon some occasions the moral malignity of the offence has exposed the criminal to the most rigorous consequence of legal interpretations, unknown before even in our courts. As the interpretations of which I am speaking have, and ought to have, the force of statutes, it were well if the substance of them were compressed into clear and correct language, incorporated with the abstract of our penal code, and announced publicly in every parochial church. But who, it may be asked, is to be employed in supplying that language? Clerks in office are not easily weaned from their fondness for the tedious tautologies, and crabbed phrases, which pedants impertinently contrast with laconic conciseness, and attic elegance. Attorney Generals are too keen in the chace of their nobler game among the enemies of the state to waste their skill in the petty and inglorious toils "τῆς ζωγρίας." Learned and stately Judges, though in the cause of humanity they might deign to exercise the authority of critics, can not be expected to stoop to the drudgery of becoming epitomists. The case however is not quite hopeless. Let a man gifted with sound sense and a tolerable degree of patience stand at the elbow of a good lawyer, who is not very supercilious nor very pertinacious,

"Verbaque provisam rem non invita sequentur*."

* Hor. de Art. Poet.

Is it possible that statutes for the infliction of death could pass with the rapidity which we have sometimes witnessed, if every legislator, laying his hand on his heart, were to reflect on the sound and solemn language of Blackstone? "To shed the blood of our fellow creature," says he, "is a matter that requires the greatest deliberation, "and the fullest conviction of our own authority; for life "is the immediate gift of God to man; which neither he "can resign, nor can it be taken from him, unless by the "command or permission of Him who gave it; either ex- "pressly revealed, or collected from the laws of nature or "society by *clear* and *indisputable* demonstration *."

Yet it were an insult upon the national character to suppose that our legislature either enacts severe laws, or abstains from the discussion of those which ought to be repealed, in consequence of deliberate or habitual inhumanity. But their *inattention* is much to be deplored. When laws either for the extension of power, or for the preservation of liberty, are proposed, ambition or patriotism rouses the attention of speakers and hearers, parties stand in array against parties, and the merits of measures are discussed with ardour and precision. But if the repeal of a penal statute be recommended, the timorous shrink, the lazy retire, and they who reflect or feel, are sometimes borne down by trite maxims, which are utterly inapplicable to the question—or by pompous harangues upon the excellence of the constitution, which neither directly nor indirectly would be injured by a favourable result—or by tedious details upon the remedial properties of capital punishment, while the evil which it involves in the destruction of individuals, or by the example of barbarity it affords, are underrated, and while the instances† in which it fails for the purposes of prevention are overlooked‡.

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* Book iv. chap. 1. † Beccaria.

‡ After all that has been written on the want of efficacy

He must be a negligent observer of human life who supposes that the superstition of man is confined to regulations which respect religion. The reasoning of Cato upon such regulations may be applied to other subjects. "Ubi "legum nomen prætenditur erroribus, subit animum ti- "mor, ne pœnis, quæ iniquæ sint, levandis sani juris aliquid "immixtum violemus *." Upon such occasions we seldom fail to meet with well-meaning objectors whom, like Cato, "oratores non solum graves, sed interdum etiam truces "esse scimus omnes, cum ingenio mites sint †."

In legislation, as in all the other important concerns of social life, I know "bona consilia mora valescere ‡," and doubtless, if men could be trusted for perseverance in the pursuit of real good, for readiness to embrace every real opportunity of obtaining it, and for solicitude to distinguish between real and artificial difficulties, the exclusion even of *seeming* precipitation in the amendment of our laws would be a most valuable advantage. There is, however, little danger of such precipitation among ourselves, because the public sentiment and the public language of our countrymen have long been in favour of great and numerous changes in our penal system, and because the task of deliberating on such changes and preparing them for the view of Parliament would, in all probability, be committed to men of great observation, great sense, great honour, and great humanity.

Speaking of other countries and other times, Beccaria has eloquently described, "that difficult and terrible passage

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and the want of proportion in our laws, it is most unreasonable for objectors to the revisal of them to talk "de causis incertis, "eoque difficilioribus remediis." Let the experiment be made. "Nul- "lus contentioni locus est in eo consilio quod non potest laudari "nisi peractum." (Tacit. Hist. lib. i. parag. 10 and 7.)

* Liv. lib. xxxix. par. 16.

† Liv. lib. xxxiv. par. 5. ‡ Tacit. Hist. lib. i. par. 7.

" from error to truth, from darkness to light, when the " violent shock between a mass of errors useful to the few " and powerful, and the truths so important to the many " and the weak, with the fermentation of passions, excited " by the occasion, were productive of infinite evils to un- " happy mortals *." But have we much to dread from such a shock? Can it be denied that upon the propriety, and I had almost said, the necessity of revising our Penal Code, persons distinguished by science, and good sense, by patriotism and loyalty, are alike accustomed to pour forth the most serious complaints in their writings and their conversation? Yet men, and I fear, classes of men, may be found among us, not only unwilling, as I have already said, to investigate, but unwearied in their endeavours to repress investigation: and to those who look deeply into the latent influence of prejudice, habit, pride, and all the unsocial affections which are the usual attendants of pride, it is not difficult to discover the causes of this long-continued and much-lamented opposition.

The repeal of the infernal statute de hæretico comburendo, in the time of Charles II. and a few other instances of repeal in succeeding reigns, are events which every benevolent man will contemplate with satisfaction. But in my mind they amount to a very scanty compensation for the extension and enactments of penal laws, which, in accommodation to the commercial interests and the commercial spirit of the country, have been strangely multiplied, and by which old and new felonies are consigned to goodly correction from a personage, who, by the courtesy of Plato, has more than once been called " ὁ ἄνθρωπος †." " But " what," exclaims Beccaria, " are the natural sentiments " of every person concerning the punishment of death? " We may read them in the contempt and indignation

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* Cap. 42.

† Phædo, parag. 65, et alibi, in Forster's edition.

" with which every one looks on the executioner *, who is " nevertheless an innocent executor of the public will; a " good citizen who contributes to the advantage of society; " the instrument of the general security within, as good

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* " By the laws of the Romans," says Mr. Eden, p. 327, " the executioner was forbidden not only to appear in the forum, " but even to have any habitation in the city, and this was en- " acted that the minds of the people might not be familiarized to the " idea of capital executions." He quotes from Cicero in his speech pro Rabirio the following words: " Carnificem non modo foro, sed " etiam cœlo hoc ac spiritu censoriæ leges, atque urbis domicilio " carere voluerunt." I have heard that under the late French monarchy the bourreau was compelled to wear his sword on the right-hand side, as a mark of ignominious distinction.

" In moderate governments," says Montesquieu, " a good " legislator may make use of every thing by way of punishment." (Book vi. ch. 9.) But he can do more. While he takes care not to violate our natural sentiments of justice and humanity, he can infuse a greater portion of infamy into any punishment without increasing bodily pain. He might employ the sabre, not the ax, in the execution of murderers, and Englishmen, like the Jews of old, might gradually be brought to think " pœnam " gladii esse turpissimam." (See Fabricii Bibliothec. Antiq. cap. 15.) My readers may in the fourteenth and fifteenth paragraphs of this chapter find a catalogue of the authors who have written on the different kinds of punishment employed by governments ancient and modern. They who wish for information *de carnificibus veterum* would do well to consult cap. 43, vol. i. of Falster's Amoenitates Philologicæ. If it be asked, why I so often refer to writers upon Crimes and Punishments, my answer is, that not belonging to the profession of the Law, I am unwilling deservedly to expose myself to any contemptuous question, similar to that which a person who had been talking confidently *de rebus cœlestibus* once provoked from Diogenes, " Ποσταῖος " πάρει ἀπὸ τῆ ψραγῆ." (Diog. Laertius, lib. vi.)

" soldiers are without. What then is the origin of this con-
" tradiction? Why is this sentiment of mankind indelible
" to the scandal of reason? It is that in a secret corner of
" the mind, in which the original impressions of nature are
" still preserved, men discover a sentiment which tells them
" that their lives are not lawfully in the power of any one,
" but of that Necessity only which with its iron sceptre
" rules the universe *."

" To vindicate the multiplicity † of capital offences
" which the laws of England are accused of maintaining

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* Cap. 28.

† " In the Lent circuit of England no less than two hundred
" and eighty-six persons were capitally convicted in 1786, and
" the annual amount of those transported is from nine hundred
" and sixty to a thousand.

" It is needless to make observations on these striking facts,
" which prove conclusively, that the severity of the laws instead
" of preventing, is frequently the cause of crimes. The human-
" ity of mankind revolts at the strict execution of them, and the
" hopes of impunity become a source of temptation. To this Mr.
" Howard, among others, traces the mischief: ' and yet, (he
" adds) ' many are brought by it to an untimely end, who might
" ' have been made useful to the state.' (Laz. 221.) No one
" will deny the justice of this last observation, when they learn
" from the mouth of the Solicitor General of England, ' *That of*
" ' *those who are executed, eighteen out of twenty do not ex-*
" ' *ceed twenty years of age.*' (18 Parl. Reg. 22.)

" It is difficult to conceive how a free, humane, and generous
" people should so long have endured this weak and barbarous
" policy." (Bradford's Enquiry how far the Punishment of Death is necessary in Pennsylvania, p. 61.)

The work from which the foregoing quotation is taken, abounds with important observations upon jurisprudence, and is written with great elegance of style. Mr. Bradford had for many years holden the place of Attorney General in Pennsylvania, and

" beyond those of other countries," Dr. Paley thinks it " sufficient to vindicate the lenity of the laws, that some in- " stances are to be found in each class of capital punishment, " which require the restraint of capital punishment, that this " restraint cannot be applied without subjecting the whole " class to the same condemnation; that these laws were " never meant to be carried into indiscriminate execution, " and that the legislature, when it establishes its last and " highest sanctions, trusts to the benignity of the Crown " to relax their severity, as often as circumstances appear " to palliate the offence, or even as often as those circum- " stances of aggravation are wanting which rendered this " rigorous interposition necessary*." I do not know that in any European state laws inflicting death are intended to be indiscriminately executed. I do know, that under governments less mixed than our own, " clemency," according to Montesquieu†, " is the characteristic of monarchs, " and that, however easier it may be to feel than to describe " when it is proper to punish, and when to pardon, dangers " from the exercise of clemency," if great and real, " are visi- " ble." Far be it from me to intercept the mercy which among ourselves flows from the Throne. But the frequent necessity of exercising that which is called mercy, has induced many men to suspect, that what is called justice in the laws sometimes deserves another name. If the proportion between those who suffer after condemnation, and those who

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was called by Washington to fill the office of Attorney General for the United States. His well-meant and well-directed labours were not without effect in America. The different form of government, and the different interests and manners of society may require some caution in the application of his principles to the English laws. But his book deserves very serious attention from every person who laments the severity of those laws, and who may hereafter be engaged in the amendment of them.

* Chap. ix. † Book vi. cap. 21.

are spared, were very great, we should no longer endure the laws*. If it be, as Dr. Paley justly describes it, very

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* Of ninety persons, who in the space of twenty-three years were convicted at the Old Bailey, previous to 1771, there were but twenty-two executed, which is less than a fourth. See Jansen's Tables, and Bradford, page 62. But in other years the catalogue of sufferers is more dreadful. From the Tables in Howard's State of Prisons we learn, that "at the different assizes within the Oxford circuit, for seven years from 1764, six hundred and ninety persons were tried, and six hundred and fifteen acquitted; besides two hundred and ninety-three discharged by proclamation. Within the Home circuit, from 1764 to 1770 inclusive, one hundred and fifty-nine burnt in the hand, ninety-six whipped, and three hundred and eighty-six acquitted. In the Norfolk circuit, from 1750 to 1772, four hundred and thirty-four condemned to death, and only one hundred and seventeen executed. In the same space of time, for the Midland circuit, five hundred and eighteen condemned to death, and one hundred and sixteen executed. And at the Old Bailey, London, from 1749 to 1771 inclusive, one thousand one hundred and twenty-one sentenced to die, and six hundred and seventy-eight executed." This note is taken from page 78 of a Visit to the Philadelphia Prison.

"Government," says Mr. Bradford, (page 13,) "is an "experimental science: and a series of well-established facts in "our state is the best source of rational induction for us." Mr. Bradford has given us a table exhibiting a view of the number of persons convicted of all capital and certain other crimes in Pennsylvania, from 1779 to 1792. In a work on the Prisons of Philadelphia, published in January, 1796, there is a table of convicts, from January, 1787, to March, 1795. In the Appendix to Mr. Turnbull's book, called, A Visit to the Philadelphia Prison, there is one table of punishments for several heinous offences, as established by the laws of Pennsylvania, and another of offences committed in the city and county of Philadelphia, from January 1, 1787, to June 1791, being a period

small, we shall find it difficult to justify the laws, as they now stand. The spirit of juries, the spirit of Judges, the

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of the last four years and five months under the old criminal system. In page 266 of volume sixth of Liancourt's Voyage des Etats-Unis D'Amerique, fait en 1795, 1796, et 1797, there is a Tableau du nombre et de l'espece des Convicts pendant les quatre dernieres années de l'ancien systeme, et les quatre premieres du nouveau. I am acquainted with no other tables of English convicts except Jansen's, published in Howard's Lazarettos. If our penal code should ever be reformed, I am sure that it will be thought right to ascertain the effects of the measure by well-constructed tables; and the perspicuity and precision of those which have appeared in America furnish us with excellent models. The reformation itself would be facilitated, if tables were prepared of convictions at Quarter Sessions and Assizes in every county, of executions, of pardons, of commuted punishments, and of the offences committed after the expiration of long imprisonment or exile, from the restoration of Charles II. or at least the accession of William III. to the present time. Conspicuous would be the figure of a certain *annus mirabilis* between 1780 and 1790. "Then stood up" common sense, "and "prayed," and in some quarters "the plague ceased."

They who have read Goldsmith's Traveller will not think unfavourably of him as an observer upon national manners. The rigours of our penal code, and the effects of it did not escape his notice. "I cannot tell," says he, "whether it is from "the number of our penal laws, or the licentiousness of our "people, that this country should show more convicts in a year "than *half of the dominions* of Europe united." Mr. Bradford, who quotes the foregoing passage from Goldsmith's Chinese Philosopher, adds, "Wendeborn, an intelligent German, who resided "some time in England, assures us that the punishment of death "is more frequently inflicted in England than *in all Europe* "*together*, in the same space of time." (Bradford, page 60.) I lately read in one of our newspapers, that the King of Sweden, after bestowing high praise upon the constitution of England,

spirit of the people, and the spirit of their Prince are doubtless on the side of lenity. But if we look into the penal code itself what do we read in almost every page?

" I LICTOR COLLIGA MANUS—CAPUT OBNUBITO—
" ARBORI INFELICI SUSPENDITO *."

Such, in this country, the land of arts, of freedom, and of a pure and reformed religion, such, I say, is the " *lex horrendi carminis* †" against more than a hundred and seventy offences ‡. But, what, I ask, before Earth and Heaven—what is the language of common sense, of philosophy, of humanity, of religion, to a Judge who should avowedly endeavour to enforce such a system with undistinguishing and unabated rigour? It was written upon the tablet which an upright and intrepid favourite sent to his Imperial Master presiding in a Roman tribunal,

" SURGE TANDEM CARNUFEX §."

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the virtues of its Sovereign, and the bravery, loyalty, and magnanimity of the people, expressed deep concern upon the severity of our penal laws. The opinions of foreigners, and especially of monarchs, upon this subject, are more likely to be correct and impartial, than the judgment they pass upon political measures or political principles.

* Vide Orat. pro C. Rabinio, paragr. 2.

† Vide Liv. lib. i. parag. 26.

‡ Since the statement made by Blackstone the number of capital crimes seems to have increased, for in 1786 Capel Lofft, as quoted by Jebb on Prisons, (page 96,) states them as follows: " Felonies without clergy, one hundred and seventy-six; Felonies " within clergy, sixty-five." The number has since increased by punishments for mayhem and forgery.

§ Vid. Dio Cassius, lib. lv. par. 7.

I have been present when English Judges * sitting on the bench, took occasion to mention the number of capital crimes; and it required little penetration to discern that with all their rooted sense of official duty and decorum, and all their humane solicitude to warn the surrounding multitude, they were inwardly not quite at ease with some provisions in the laws which they were authorized to administer, and of which they sufficiently understood the original grounds, and the practical effects. I have, also, now and then witnessed very slight emotions of sorrow from the "dreadful notes" of a sentence, which, if it had been pronounced by my own lips, would have tortured my mind, as it is now formed, with anguish unutterable, and the recollection of which would have disturbed my slumbers for days, and months, and years. But it may sometimes

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* With the general conduct of our own Judges let us contrast what we read of the Scotch Judges, when "employed in the perse-"cution of Congall and his intrepid followers. The effect of this "heroic constancy upon the minds of their oppressors, was to per-"suade them *not* to lessen the number of executions, but to render "them more *private*, whereby they exposed the true character "of their government, which was not severity, but violence; "not Justice, but Vengeance; for *example* being the *only* legi-"timate end of Punishment, where that is likely to *encourage*, "*not to deter*, (as the Government in this case seems to have "apprehended,)" and "consequently to prove more pernicious "than salutary, *every* punishment inflicted by the magistrate is "cruelty—*every* execution, *murder*." (Mr. Fox's History of James the Second, cap. ii. page 117.)

I have already expressed my disapprobation of Capital Punishments inflicted in *private*; and they are more especially to be dreaded in real or pretended offences against the state. I repeat, what I before said, that the cases in which even a lighter punishment might be privately inflicted, must be very few. The offence should be not heinous, and the sense of shame in the sufferer is to be spared, lest he become hardened.

be unfair to set up our own opinions and feelings as the measures of right to other men, and it is always dangerous to assume, that in situations hitherto untried, we should ourselves be superior to other men in circumspection, or philanthropy. If a larger portion of mildness were infused into the laws themselves by the interposition of the legislature, there would be less room for sternness in the Judge, or dissatisfaction in the observer.

In the administration of the civil code there is often little scope for compromise between the contending parties. What one gains, the other must lose. "That," says Hale, "which preserves the rights and property of one man, may "and must thwart what another mistatingly thinks his "right*." But some rule or other governs the decision, and the property remains in the state, though the proprietors be changed. The regulation of the conditions on which it is claimed may often be attended with great difficulties, and therefore in the mixed and fluctuating state of human affairs there might be great danger in very sudden and violent alterations, to which the opinions and the pursuits of men could not be easily accommodated. But the reformation of the penal code does not seem liable to similar objections. Punishments may be mitigated, but *not abolished.* The offender *must* still be doomed to suffer, and if the laws make his sufferings in general opinion proportionate to his offence, he will have less to hope from the ill-directed pity of those by whom he is to be tried, and he will have more to fear from their well-directed sense of justice.

As nations become more populous, and more civilized, fresh difficulties in the administration of their civil code will inevitably arise from the diversified modifications of property, and the multiplied collisions of interest. But I believe that with our own growing population the number of offenders against penal laws will not be found to

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* Cap. 2 on the Amendment of the Laws.

be much increased, and after long enquiry I am convinced that the malignity of their offences has been gradually diminished by the progress of civilization, that men are less accustomed to lurk in solitary recesses, that they are less able to form and execute their plots in *armed* confederacies, and less disposed to add sanguinary violence to open robbery. The class of those who violate the laws made for the protection of the public revenue is, perhaps, somewhat more numerous. But the laws themselves have increased in number and severity, and I shudder at the recollection of some instances in which they have been executed with a degree of rigour not very honourable to a free and a Christian country. Such laws, with such tremendous penalties, ought to be passed with the utmost circumspection and reluctance, because it is possible that the fleeting interests or the corrupt views of statesmen will have a most undue influence upon the execution of them, and because the fountain of mercy, which is open to other and more depraved wretches, may sometimes be shut against the criminals of whom I have been speaking.

Mr. Bentham, when pointing out the mischiefs resulting from the unpopularity of a punishment, properly observes, that " nations are liable to have their prejudices and " their caprices which it is the business of the legislator " to study and to cure. That even the unmerited want of " popularity introduces weakness into the law, when the peo- " ple being dissatisfied with it withhold their assistance in the " execution of it, and therefore that it is the duty of the legis- " lator to correct their unreasonable dislike and to give them " such instruction as may prevent them from quarrelling " with their own interest *." But the laws to which I advert owe their want of popularity to the excess of their *rigour*, and it is utterly impossible to defend them upon any principle of utility, " For it is a *false* idea of utility, which sacrificing

* Vid. Cap. 15.

" things to names separates the public good from that of in-
" dividuals*."

It required an effort from me to believe, that I was treading on the soil of England, when the fate of a person who some time ago had violated one of our modern statutes, was first made known to me. The evidence upon his case, I thought, was clear—the Judge and jury were impartial—the sentence, after much discussion, proved to be legal. But the law itself is very harsh. The violation of it gives no great shock to our moral feelings, and to prevent the crime forbidden in it by death, seems to set political reasons at variance with our common apprehensions of justice. As to certain persons, who, from their official situations might without impropriety have advised the mitigation of the punishment to a first offender, it is quite impossible for me upon this occasion to commend them as ministers, or to esteem them as men. But I confidently looked for better things from one Statesman, who in Genius and Magnanimity towered above all his colleagues, and who has since been summoned before the tribunal of that Being, who " hath " no respect of persons," and " who turneth" not " judg-
" ment into wormwood and gall."

Eagerly, however, do I seize this opportunity of paying a public and grateful testimony to the memory of the illustrious person to whom I just now alluded. Disregarding the difference of our political sentiments, he at my request gave the fullest effect to my exertions for saving an unfortunate person who had committed the crime for which he was on the point of suffering death, but was guiltless of some aggravations hastily imputed to him: and who by the diligence, sobriety, and honesty which he has uniformly manifested for the space of twenty-five years from the time of his deliverance, has fully justified the opinion I had formed of him, and amply repaid to society the mercy shewn to him by the executive government.

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* Beccaria, chap. 40.

If I had not known the want of caution (for I will not call it the want of humanity,) which sometimes steals upon the minds even of legislators, I should have supposed that some of my countrymen had come fresh from their studies in the laws of Japan*, where almost every offence is punished with death, because it is an offence against the great Emperor, or that they had been seized at the moment with the fanaticism of the Stoics. "Horum sententiæ sunt "ejusmodi; Viri esse neque exorari neque placari; neminem "misericordem esse, nisi stultum, et levem; omne delictum "scelus esse nefarium, nec minus delinquere eum, qui cum" "lex Cornelia nummaria vetuerit, pictas chartas dolo "malo insigniverit, quam eum, qui latro aut sicarius "fuerit †."

Hard upon some occasions seems to be the lot of frail man, beset upon one side by the moralist with his notions of guilt, and on the other, by the politician with his solicitude for prevention. Are the most natural and salutary feelings of the heart wounded, as in cases of murder and aggravated robbery? "Let the offender be cut off," exclaim both the moralist and politician, for different reasons, it should seem, but with the same effect. Are those feelings languid, as in other cases they sometimes appear to be? "Let the defect of their vigour be supplied," says the politician, "and let us look for that supply where "we are sure of finding it, in capital punishments." To the legislator who reasons thus I should calmly reply, In the present state of things ‡ I accede to your first principle

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* Vide Montesquieu, book vi. cap. 18.

† Vid. Cicero. Orat. pro Muræna, and Horat. lib. i. Sat. 4.

‡ I say the present state of things, because it is conceivable that even in our own country, Capital Punishment may at some distant

generally, and even in the second I might, under some circumstances, acquiesce to any extent that does not a-

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distant period be abolished. I presume not to decide the awful question, "Has the legislature a right to enforce its own laws "by the death of the transgressor." Blackstone, (Cap. i. lib. 4.) says, that "persons of some abilities have doubted it;" and I know men of *very great* abilities, who entertain the same doubt. The horror of the human mind at murder is just and universal, and we read of the wise and humane Solon, "τοὺς Δράκοντος νόμους ἀνεῖλε, πλὴν τῶν φονικῶν ἅπαντας." (Vid. Plutarch. in Vit. Solon, vol. i. page 87. Edit. Xyland.) Now the purposes of example among ourselves *may* sometimes require the punishment of a murderer by death. But the principle of incorrigibleness in the offender is certainly not the ground of his punishment. "Murder is not an habitual crime, as theft is, "and consequently the amendment of the guilty is a subject "of more reasonable hope." (See page 35 of Observations on the Prisons of Philadelphia, by an European.) "Murder," says Mr. Bradford, "in its highest degree has generally been pun-"ished with death, and it is for deliberate assassination, if in "any case, that this punishment will be justifiable and useful." (page 35.) "When we consider," says the same writer, (page 38.) "how different in their degrees of guilt offences held to be "murder, are from the horrid crime of deliberate assassination, "it is difficult to suppress a wish that some distinctions were "made in favour of homicides which do not announce extreme "depravity." In that wish I sincerely sympathise, and I fear, too, that the distinctions made by the English laws are too obscure and too few. But to the list of capital offences proposed by Mr. Bradford, surely without any violation of humanity we might add wilful and premeditated *parricide*—private poisoning, where the evidence of the fact is *very* clear, and where the causes of death are ascertained before the court by the testimony, not of village surgeons and apothecaries, but of two or more physicians, eminent for science and experience—murder, con-

nected

mount to death. " Est locus sententiæ per quam neque impro-
" bis hominibus delictum impune sit, et nos clementiæ simul

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nected with burglary, or robbery by night—and high treason, when the laws upon this subject are completely disencumbered from such a mass of intricate and oppressive constructions as makes it impossible for the bulk of English subjects to understand the statutes which, under the penalties of death in its most tremendous form, and of confiscation, they are now required to obey.

I have long thought with Mr. Bradford, that murder in judicial construction, is a term " too broad and comprehensive," and that in the laws of William Penn the words " wilful and " premeditated" murder were wisely substituted for the technical phrase, " malice aforethought." If the penal code of England should be revised, I hope that this subject beyond all others, will be seriously and strictly examined, and especially that part of it which inflicts death for child-murder. The reluctance of English juries to condemn persons accused of that crime, is a proof that some alteration may be made with safety. Child-murder in Scotland is, I am told, not punished, in the first instance, with death. " In Denmark, (Vid. Bradford, p. 40.) women guilty " of child-murder are no longer punished with death; but are con-
" demned to work in spin-houses for life, and to be whipped annu-
" ally, on the day when, and the spot where, the crime was com-
" mitted." " This mode of punishment," Mr. Howard assures us, (Howard on Prisons, page 74,) " is dreaded more than death,
" and since it has been adopted has greatly prevented the fre-
" quency of the crime."

" An attempt was made to introduce a similar alteration in
" the laws of Sweden. It was recommended by Gustavus III.
" in his speech at the opening of the Diet of 1786. But this in-
" novation was warmly opposed by the clergy: and the patriots,
" to whose consideration it was referred, were unanimous in
" advising the representatives of the nation to continue the
" punishment

"ac severitatis non pæniteat*." But this summary way of proceeding by capital punishments, though it may as-

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"punishment of death." The heinousness of murder is recognized even in countries where the penal code has been corrected. Murder, in the first degree, is now a capital offence in America; and in Russia, pain more terrible than death, both to the spectator and the sufferer, is employed to mark the punishment. I presume not to point out any regulations to the English legislature. But I hope to be excused for remarking, that one circumstance in our punishment of murderers has always appeared to me exceptionable. As the proof of the crime often depends upon circumstantial evidence, and as that evidence from its very nature must be in some degree doubtful, I never was satisfied with the execution of murderers within the space of forty-eight hours after their sentence. Surely speediness has been confounded with certainty. If, after a time, which the wisdom of the legislature may prescribe either generally, or with express reference to particular kinds of proof, no facts favourable to the convicted party should be discovered, let him suffer judgment—let him perish on the spot where he offended—and let his execution be accompanied by peculiar solemnities.

God forbid that I should attempt to lessen our natural and salutary horror at the shedding of human blood. But in the sentiments of mankind towards the crime of murder, I have observed that a large portion of *revenge* is always mixed with moral disapprobation, and reflecting upon the indiscriminate eagerness of men to punish a murderer with death, I have found it resolving itself ultimately into the *lex talionis*, and accompanied of course with strange inequalities. An eye for an eye, a tooth for a tooth, blood for blood, is rather the language of rage in an offended individual, than of deliberation in a wise legislator.

It is surprising to find Blackstone and other grave writers insisting upon that scriptural passage in which we read, "Whoso "sheddeth man's blood, by man shall his blood be shed," and from

*Tacit. Annal. lib. iii. par. 11.

sume the appearance of vigilance and zeal in the public service, is in reality too well adapted to the indolence or

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from which it has been inferred, that blood can only be expiated by blood. Mr. Turner, in the second volume of the Memoirs of the Literary and Philosophical Society of Manchester, considers the text as a prediction, not a law; and in an Inquiry into the Effects of public Punishments, published in Philadelphia, it is said that "the language of it is simply, that such will be the "depravity and folly of man, that murder, in every age, shall "beget murder." (Page 15.) I accede not to either of these interpretations. The text and the context evidently suggest to us the notion of a precept, connected indeed with a prohibition to "eat flesh with the life thereof, which is the blood thereof." The punishment extends to every beast which kills a man, as well as to every man who kills a fellow-creature. Rosenmüller, in his Scholia in Genesin, thus writes, on the passage which relates to beasts: "Volo, ita vos sanguinem animalium edendorum effundere, "ut crudelitatem interim vitetis, ne earum carnem simul cum san-"guine comedatis. Videtur hic utrumque includi, ne aut mem-"brum ex animante adhuc viva palpitans, aut etiam sanguis "adhuc palpitans edatur." "Quamquam poenae, quae proprie "dicuntur, in bruta non cadunt, tamen ea quodammodo poenas "luunt, cum propter violatos homines occiduntur. Hoc autem "Deus ideo dicit, ut significet, quantum ipse abhorreat humani "sanguinis effusionem, propter quam ne bestiis quidem, ratione caren-"tibus, parci velit." (Cap. ix. p. 102.) The text then says, "And "surely your blood of your lives will I require: at the hand of every "beast will I require it; and at the hand of man, at the hand of "every man's brother will I require the life of man. Whoso "sheddeth man's blood, by man shall his blood be shed: for "in the image of God made he man." (Genesis ix. 5, 6.) In the notes of Le Clerc there is much learned criticism on some of the Hebrew phrases, and a clear account of the arbitrary and absurd distinctions which the Jewish doctors have introduced between the judicial dispensations of Heaven, announced in verse 5,

and

the pride of men in making laws, which they are themselves under little temptation to violate. It presents itself

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and human punishments prescribed in the next verse. Le Clerc has given the following explanation of the passage: "Bruta quidem, quorum dominium ad homines pertinet, occidere licebit: "at hominem, qui ad instar Dei iis dominatur, et nimini nisi "Deo absolutum omnibus numeris obsequium debet, temere interficere nefas." But where there is *nefas*, there must be punishment, and the punishment ordained here is evidently death. If, however, we maintain that death ought to be the punishment of bloodshed *in consequence* of this precept, are we at liberty to separate it from the other precepts about destroying the beast, and abstaining from blood, though, indeed, to the last interdict no special penalty is annexed? Are we not bounden (if at all) to follow the *letter* of the precept, which does not even hint a distinction between manslaughter and murder, and in *every* case to shed the blood of him by whom man's blood has been voluntarily shed? If discretionary interpretation is to be admitted, what are its limits, or its rules? Is the precept imperative to Noah, and permissive only to us? Does the passage contain merely a *proof* to us by the *example* of the patriarchal age, that homicide may be punished with death, or an authoritative *direction* for us to imitate that example? The plain fact is, that from a precept intended for the use of Noah and his family, and adapted to a very *imperfect* form of society, no general rule can be drawn, which carries with it the force of obligation to a civilised community of Christians. Instead of contending for legal conclusions which the principles do not clearly warrant, I should infer from the whole passage this moral lesson, that great tenderness is due to the life both of man and beast.

The capital punishment of murderers in England *may* be justifiable; but does not depend for its justification upon a passage to which writers on jurisprudence so often appeal. I am farther at a loss to see how the penal laws enacted even in later times by Moses, can have any direct authority in Christian countries, if we

readily to the coarsest understanding, and you fly to it with little reflection, though upon a collective view of all the

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we reflect upon the theocracy peculiar to the Jewish government, or upon the ignorance and barbarous manners of the people to whom those laws were originally given. "Severity," says Mr. Turnbull, "might be expedient for the government of the Jews, "but the same policy cannot be said to suit nations, whose "manners have been meliorated by time, and the influence of "the doctrines of the Prince of Peace. He gave us so many "precepts of morality and forbearance, that none can assume the "title of his followers, and retain at the same time practice and "principles which in his divine mission he so directly forbids." (Page 86 of a Visit to the Philadelphia Prison, published in 1796.) Mr. Bradford, (page 21,) states some facts about a nameless, but most odious, and among ourselves, happily, a most rare crime, which always provokes just and fierce detestation, and which in the opinion of many wise and virtuous men it were better for the laws to restrain by the MOST indelible and dreadful marks of infamy, than according to the directions of a statute which was passed in the reign of an execrable tyrant, and perhaps was intended to facilitate his system of rapine, by holding up a certain much-injured and much-slandered class of his subjects to public hatred. "Those facts," says Mr. Bradford, "may teach us, like "the capital punishments formerly inflicted on adultery and "witchcraft, how dangerous it is rashly to adopt the Mosaical "institutions. Laws might have been proper for a tribe of ar-"dent barbarians, wandering through the sands of Arabia, which "are wholly unfit for an enlightened people of civilised and gen-"tle manners."

If Christianity itself is allowed to contain, not political regulations, but moral rules of conduct, why should legislators, as such, assign any authority to the Jewish laws, in countries where the Mosaical religion never was established, and where the progress of men in civilization and knowledge, their social

interests,

circumstances which ought to regulate your measure, it will be seen to require the greatest. You will find it

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interests, their manners, their opinions, and their forms of government, are widely different from those of the Jews?

The *communes intelligentiæ*, which more or less influence the moral sentiments of Jews, Christians, and indeed all men in a state of society, ought not to be confounded with the provisions which the Jewish Lawgiver expressly made for his own people, and for them only. "Even in that very people," says Hale, "although the text of the judicial law was that which "was the basis and rule of their government and policy, yet the "wisdom of Almighty God even in the very giving of that "law, and divers times after, upon variety of emergencies, in- "stituted a clause for the accommodation of things in the same "state according to the exigence of things and emergencies, viz. "the great council of that people, their Sanhedrim, and the go- "vernors of that people, their kings. Upon the whole, there- "fore, I conclude, that that law was contrived with most per- "fect wisdom for that people, and during that state; and there- "in consisted, in a great measure, the wisdom of it, in that "accommodation. But to translate that law to another people, "to whom it was not accommodate, were a wrong to the Di- "vine wisdom." (Hale on the Amendment of the Laws, cap. 2.)

Note upon "*little reflection*," page 471, line 2.

In page 322 I had occasion to quote a passage in which Johnson speaks of human laws, as "the last effort of human reason "providing for human happiness." But to this general encomium he has himself supplied us with a principle of exception, when he tells us, "Laws are often occasional, often capricious, made "always by a few, sometimes by a single voice." (Idler, No. 11.) My general principles are, let laws be *well* considered, before they are enacted. Let them be enforced with firmness not wholly excluding mercy, while they are unrepealed. Let them be repealed;

difficult to persuade the mass of mankind, that in planting such terrible penalties around regulations of *mere policy*, you are acting for the public weal, rather than for purposes of your own personal ambition, or your own peculiar interests. You teach common minds to confound moral rectitude with political expediency. You shock virtuous men by an appearance of *novel* and wide disproportion between the offence and the penalty. You throw an air of artifice and austerity over those restraints which the judgment of civilised man cannot approve, and you run the hazard of weakening his general respect for the authority and equitableness of the laws. Is it quite safe for you to confess, that in appointing punishments you pay more regard to the efficacy of statutes required by the temporary exigencies of the state, than to the general spirit of your constitution, and the most amiable sympathits of human nature itself? May not such confession induce the offender to stand absolved in his own mind from the common laws of morality; and to calculate probable loss and probable gain when he is tempted to commit a crime, and ultimately "patrati

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pealed, when they are experimentally found to be inefficacious, or oppressive, impracticable without public inconvenience, or unjustifiable, without technical subtleties. Demosthenes denied in "eo positas esse fortunas Græciæ, hut, an illuc manum "porrexerit." (Cicero. Orat. p. 157, vol. i. Edit. Gruter.) I hold, that the life of the meanest citizen ought not to depend on the uncertain judgment of those, who can tie or loosen the "Juris nodos," and warp or straighten the "legum ænigmata," (See Juvenal, Sat. 8.) according to the minutest variations in circumstances, or the supposed exigencies of the times. I believe, however, that no Judge now living would have decided, as Hale did, at the Cambridge assizes, on the burglary I mentioned in page 362, line 26—32.

" malle, quam inceptí facinoris reum esse*?" You may, it is true, find your way to his fears. But you lose every hold upon the remaining force of his conscience. You compel him to form and execute his plans with redoubled secrecy, and you enfeeble his sense of duty in all the private relations of social life. You may, indeed, crush him by your power. But this has been done on trifling provocations by other men, " qui cum reges sint, æquam rem non " imperitant†." Do not suspect me of pleading for impunity to the rash persons of whom I am speaking. Take if you please very largely, but do not cast away all humanity when you are taking, advantage of the well-known and much abused maxim, " Nec quies civium sine armis, neque " arma sine stipendiis, nec stipendia sine tributis haberi " queunt‡." Do not inflict the sharpest pain, where it is impossible for you to awaken a natural, or even an artificial sentiment of shame.

Do not by an indirect sort of fiction introduce into your statutes the *majestas imperii*, and thus imitate the Roman Emperors, who not only commanded coiners and all their accomplices to be excluded from amnesties, and to be burned to death, but in the abundance of their financial zeal, subjected the proprietors of the land on which the offence was committed to banishment and the forfeiture of their estates. I do not entreat you to soften the rigour of the Laws which you make for the protection of taxation, by infusing into them a very abundant portion of the spirit which led Theodoric to order the Director General of his demesne to remit taxes themselves: " Illud amplius nostris " utilitatibus applicamus, quod misericordi humanitati con- " cedimus. Regnantis enim facultas tum fit ditior cum " remittit; et acquirit nobiles thesauros famæ, neglecta uti-

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* Tacit. Annal. lib. ii. par. 16. † Horat. lib. ii. Sat. 3.

‡ Tacit. Hist. lib. iv. par. 74.

"litate pecuniæ*." But upon questions where the servants of the Crown and the peculiar interests of it readily present themselves to the mind, would there not, let me ask, be a *peculiar propriety* in attending to the preamble of a statute passed in the reign of Mary, where it tells us, "That the state of every King consists more assuredly in "the love of the subjects towards the Prince, than in the "dread of laws made with rigorous pain; and that laws "made for the preservation of the commonwealth, without "great penalties, are more often obeyed and kept than laws "made with extreme punishments†?" The exigencies of the state may not suffer you to be generous. But do they require you to wield the uplifted scourge against any offender, who by contrivances merely fraudulent diminishes the value of your revenues?

I forget not, as I wish you not to forget, that "many "of our corruptions arise from the impunity of criminals, "rather than the moderation of punishments‡." Disappoint then, if you please, the expectations of escape in this class of offenders, by relaxing the rules of evidence. Transfer to your statutes the principle which has been "so effi-"caciously employed against coining, and by which the "possession of implements suited to the purpose was made "evidence of guilt§." Try, if experience shews it to be necessary, many kinds and many degrees of painful punishment. But abstain from the inflictions of death upon an offence, *which endangers not the peace of the community, which invades not the property of individuals, which is not connected with their business, but their amusements, which renders* "*not the state of society unsettled, by a sense of per-*"*sonal insecurity*," and which, after all your refinements, consists, and will appear *to consist in fraud, without any*

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* Cassiod. Var. lib. i. cap. 6.

† See this Preamble, quoted by Blackstone, book v. cap. 1.

‡ Vid. Montesquieu, cap. 13. § Vid. Paley, cap. 13.

actual, or any possible mixture of violence. No enlightened inhabitant of a free and a Christian country will apply to such a punishment what was once said by C. Cassius, upon the punishment of Pedanius Secundus the Prefect: "Habet "aliquid ex iniquo omne magnum exemplum, quod contra "singulos utilitate publicâ rependitur*."

Theories, which, I confess, are not without their charms to my mind, when like that of Beccaria they breathe a spirit of pure and enlightened humanity, would never lead me to promote sudden and violent changes in the established usages of social life. I know that the love of our species ought to be adapted to the collective interests of those among whom and for whom we are doomed to act, and that in ballancing those interests we have need of reason and experience as guides to our best affections in the pursuit of their proper ends, and as restraints upon our imaginations in the vivid conception of objects, which are simple, or detached, or bulky and near. I am aware that some crimes extend their malignant effects far beyond the appearances which accompany immediate overt-acts, and therefore I would not, for the present, recommend to an English legislator the example of the Emperor Maurice, "who made a "resolution never to spill the blood of his subjects," or of Isaac Angelus, "who, forgetting that it was not for nothing "that he was entrusted with the sword, took an oath that no "man should be put to death during his reign†." But I do wish you to remember the questions which I have already quoted from Blackstone: "Is it found upon further experi- "ence, that capital punishments are more effectual? Was the "vast territory of all the Russias worse regulated under the "late Empress Elizabeth than under her more sanguinary "predecessors? It it now, under Catherine II. less civilized, "less social, less secure? And yet we are assured, that

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* Tacit. Annal. lib. xiv. par. 12. † Montesquieu, lib. vi. chap. 21.

" neither of these illustrious Princesses have throughout " their whole administration inflicted the penalty of death; " and the latter has, upon full persuasion of its being use- " less, nay, even pernicious, given orders for abolishing it " entirely throughout her extensive dominions *." I should farther wish you to reflect on the wise and humane language of Grotius: " Neque abs re erit Christianis rectori- " bus, saltem ex *parte aliquâ*, imitandum proponere ex- " emplum Sabaconis Ægyptii regis pietatis nomine laudatis- " simi, a quo capitales pœnas in damnationem ad opus mutatas " felicissimo successu narrat Diodorus †." " Notat Balsamo " leges Romanas que mortis pœnam irrogabant a posteriori- " bus Imperatoribus Christianis mutatas plerasque in alia " supplicia, quo et acrius damnatis inuretur pœnitentia, " et magis ad exemplum proficeret pœna dinturnior ‡."

The commentator on Beccaria tell us, that " political " sanguinary laws are temporary, because they are not " founded in truth §." I hope to see the day when this observation can be so far applied to one of our statutes as to produce a repeal of that part by which death is now denounced, and has been once inflicted. When that day shall arrive, they who advised the law, and they who have executed, may, with my approbation, take the full benefit of a plea which Machiavel supplies for a single instance of cruelty. " Recte crudelitatem adhibitam esse dici posset " (si quod malum est, de eo quid boni pronunciari daretur) " cum quis necessitate adactus *semel* tantum, quo securum " se reddat, crudelitatem exercet: nec amplius in posterum " in eâ insistendum ducit, sed in subjectorum majorem uti- " litatem, utcunque fieri possit, commutat. Quæ autem " perperam adhiberi dicitur, ea est quæ initio, etsi rara est, " multiplicatur tamen temporis progressu citius, quam ex-

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* Blackstone, book iv. cap. 1. † Diodorus, Sicul. lib. i. cap. 65.

‡ De Jure Pacis Belli, lib. ii. cap. 20.

§ Cap. xiv.

" stinguatur. Qui priorem rationem servandam judicabit, " is tum penes Deum, tum homines, aliquid remedii, uti " Agathocles, habere conceditur*."

" When a question," says Blackstone, " arises, whether " death may be lawfully inflicted for this or that trans- " gression, the wisdom of the laws must decide it: and to " this public judgment or decision all private judgments " must submit†."

Be it so. Let " the subject be bound to receive the in- " terpretations that are given by the sovereign power." But let those in whom the sovereign power resides, remember, that the " guilt of blood, if any, must lie at the door of " those who misinterpret the extent of their warrant." Let them consider in every country, that *great* must be that guilt, if in decreeing the *summum supplicium* they forget that " all punishment in itself is evil; that as the evil of " crime is already *past and irrevocable*, punishment is both " a spontaneous and additional evil; that in order to answer " the purposes of example it usually involves much more " evil than is contained in crimes; that it ought only to be " admitted in as far as it promises to exclude some-greater " evil," and that no task can be more difficult, or more important, or more meritorious, than to determine well where " punishment is groundless—where it is inefficacious " —where it is unprofitable—where it is needless ‡"—and above all, where it is mischievous and odious, because excessive. In this land of freedom, more particularly, let them reflect on these *most serious* truths: that " excessive " punishment, which corrupts even a despotic government, " diffuses its malignant influence in a government which is " free:" that " where the people do not observe the laws, the " corruption is less dangerous than when they are corrupted " by the laws," because the evil lies in the remedy itself:

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* Machiavelli Princeps, p. 45.

† Blackstone, book iv. cap. 1. ‡ See Bentham, chap. 16.

that "however cruel punishments, employed by violent "governments to redress abuses, may seem for a time to "put a stop to the evil, the imagination grows accustomed "to the severe as well as the minor punishment; that where "the minds of a people have been in any degree corrupted "by too great severity of punishment, a wise legislator will, "in particular cases which admit of indulgence, mitigate "the punishment, till he shall be able to extend this miti-"gation to all cases: that absurd and brutal practices have "in all ages been justified on the footing of *pretended ne-"cessity* *, and have received the sanction of laws: that the "essence of right and wrong does not depend on words and "clauses in a code or statute book, much less upon the "conclusions and explanations of lawyers, but upon reason "and the nature of things, antecedent to all laws: that "virtue itself is but perfect reason, and that an enlightened "nation having reason for its guide, will never call for ge-"neral assent, or urge any supposed necessity, in vindicating "usurpations on the natural or social rights of mankind †."

Readily enough do we in our closets acknowledge the soundness and the importance of the foregoing principles; and if they were engraven upon our hearts, when we are called to the sacred duties of legislation, there would be less room for a remark, which the best and the wisest of men have been compelled to apply to many regulations established in our own country, and to some perhaps introduced in our own age. "England," says Mr. Bradford, "contenting herself

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* In many countries certain classes of severe laws have been protected by the plea which was once adduced for false accusations, plunders of the wealthy, and other bad practises in the government of the Roman Emperors: "Quæ gravia atque intole-"randa, sed necessitate armorum excusata, etiam in pace mansere." (Tacit. Hist. lib. ii. par. 24.)

† See Montesquieu, book vi. chap. 12 and 13, and Dagge, chap. v. sect. 1.

"with the superior wisdom, humanity, and justice of her laws "in all respects but one, and too fond of '*the ancient order* "'*of things*,'" has alone remained stationary. The nation, "indeed, is fully sensible of the evil which attends a mul- "titude of sanguinary laws, and the government itself be- "gins to be alarmed with the magnitude of the mischief. "Judge Blackstone was active in prosecuting a reform, and "Lord Ashburton, it is said, was prevented by his death "from bringing forward in Parliament a plan for that pur- "pose*."

"I hold it," says Montesquieu †, "to be an essential "point that there should be a certain proportion in punish- "ments, because it is essential that a great crime should be "avoided rather than a small one, and that which is more "pernicious to society, rather than that which is less." Hence he concludes "that some difference should be made "between the punishment of a person who robs on the "highway, and another who robs and murders." Beccaria carries the difference to the utmost point when he maintains, that "the punishment of robbery, not accompanied with "violence, should be either pecuniary, or that kind of "slavery which makes society for a time absolute master "of the person of the offender, and of his labour to repair "his usurpation over the property of another, and that cor- "poral punishments should be added to slavery, when rob- "bery is attended with violence‡."

No such distinction is made with us even in England, where our crown law, according to Blackstone §, "is sup- "posed to be more nearly advanced to perfection than in "other nations." It were easy, surely, to introduce into our statutes some distinction; to appoint death for robbery in the first instance, when it is aggravated by great violence, and

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* Page 51. † Book vi. chap. 12.

‡ Chap. 22. § Book iv. chap. 4.

to make simple robbery capital upon a third or fourth repetition *.

"It has been proposed," says Blackstone †, "that in "every state a scale of crimes should be formed, with a "corresponding scale of punishments, descending from the "greatest to the lowest." But Beccaria himself, by whom this scale was suggested, does not seem to think that it could be applied with precision to the obscure and infinite combinations of human action. He places, indeed, in the first part, those crimes which immediately tend to the dissolution of society; in the lowest, those which do the smallest possible injustice to a private member of that society; and between these extremes he puts all actions contrary to the public good, and which descend by insensible degrees, decreasing from the highest to the lowest. But he adds, that "it will be sufficient for a wise legislator to mark the prin-"cipal divisions, without disturbing the order, lest to crimes "of the first degree be assigned punishments of the last." Blackstone, whose theoretic notions were perhaps corrected by practice, doubts whether a corresponding scale of pun-

* Speaking of thieves, who had been discharged, and had returned to their old vocation, Mr. Bradford observes: "of all "offenders these are the most incorrigible. Other offences are "seldom repeated; but a person once devoted to any species of "theft is seldom reclaimed by any terrors he has undergone, or "any mercy he has received. Reformation, though not impos-"sible, must be the work of much time." (Page 23.) Mr. Bradford imputes these evils to the defects of the old system, and the frequency of pardons. "Those defects," he says, "were "corrected by the system of 1790, the execution of which has "been diligently attended to by the inspectors; and the prero-"gative of pardon, since it has resided in a *single magistrate*, "is no longer weakly exercised." (Page 24.)

† Book iv. chap. 1.

ishments be not too romantic an idea. But he in effect agrees with Beccaria, when he says, that " a wise legislator " will at least mark the principal divisions, and not assign " punishments of the first degree to offences of an inferior " rank." Does not Blackstone admit that death is the highest punishment which man can inflict, and therefore is appointed for the murderer? But if the highest punishment be, also, inflicted on the robber, the inconvenience which Blackstone himself states has arisen, and ever will arise, that when no distinctions are made in the gradations of the punishment, " the generality will conclude that there is no " distinction in the gradations of the guilt." *Such* a conclusion they might always draw, *if* the law written on the tablets of their hearts did not compel them to distinguish where the law had not; for as to the speediness of punishment, or dissection, or hanging in chains*, they are aggravations of punishment which suggest no idea of pain, and which bear very little proportion indeed to the difference of guilt between the murderer and the robber.

" Nice and particular distinctions upon the degrees of " guilt in crimes of the same nature, are particularly men- " tioned and observed upon by Ant. Matthæus, Grotius, " Puffendorf, and other writers; but an attention to such " subtle distinctions does not properly fall within the pro- " vince of a legislator; for it is impossible for laws to an- " ticipate and distinguish the particular circumstances " which may palliate or aggravate the same species of

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* The supposed aggravations of punishment, however they may disgust the spectator, rarely deter the offender. " We do " indeed leave each other to rot, like scare-crows in the hedges; " and our gibbets are crouded with human carcasses. But it may " be doubted whether a forced familiarity with such objects can " have any other effect, than to blunt the sentiments, and de- " stroy the benevolent prejudices of the people." (Eden on Penal Law, page 80.)

" offence*." We are told, indeed, by Dr. Paley†, that " the " legislature, when it establishes its last and highest sanctions, " trusts to the benignity of the Crown‡ to relax their se-

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* Vid. Dagge, book ii. sect. 3. † Chap. ix.

‡ " This," says Blackstone, " is indeed one of the great " advantages of monarchy, in general, above any other form of " government; that there is a magistrate who has it in his " power to extend mercy, wherever he thinks it is deserved: " holding a court of equity in his own breast, to soften the rigour " of the general law, in such criminal cases as merit an exemp- " tion from punishment." Happily in this country we can, and habitually we do, " look up to the Throne as the fountain of " nothing but bounty and grace." Whatsoever may be the inconvenience of frequent pardons among us, the necessity of having recourse to them in the present state of our penal code, is universally acknowledged; " and these repeated acts of goodness, " coming immediately from his own hand, endear the Sovereign " to his subjects, and contribute more than any thing to root in " their hearts that filial affection and personal loyalty which are " the sure establishment of a Prince." (Book iv. chap. 31.) Thus far I agree with Blackstone. But I must refuse my assent to the opinion which he delivers in the following sentence: " In " democracies this power of pardon can never subsist; for there " nothing higher is acknowledged than the magistrate who ad- " ministers the laws: and it would be impolitic for the power " of judging and of pardoning to center in one and the same " person." Many and weighty are the reasons which induce me to prefer our own mixed form of government to any democracy which has yet been known to exist, and to consider the power of pardoning offenders as a very useful prerogative of the Sovereign. But I must deny the assertion that a power of pardoning, equally effectual to the offender, and equally safe for the community, cannot exist in a republic. I must controvert the principle upon which the assertion is by implication founded, that " in " democracies the power of judging and of pardoning must center

" verity, as often as circumstances appear to palliate the " offence, or even as often as those circumstances of aggra-

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" in one and the same person." Whether the first magistrate be elective or hereditary, whether his authority be temporary or permanent, whether the government over which he presides be monarchical or republican, it involves no absurdity to say that he may be invested with the power of pardoning, and excluded from the power of judging. But, instead of insisting upon what we may conceive, I shall appeal to what we know. The two offices of judging and pardoning are now separated in America, and the right to pardon, as we learn from Mr. Bradford, resides in a single person, who for the time being is considered as the supreme magistrate. Perhaps Blackstone was led into the opinion which I oppose by his reflections upon the Athenians and the Romans. Many evils doubtless must have arisen from their administration of public justice. But Montesquieu, in the fifth chapter of book the sixth has shown the provisions that were made for the mitigation of those evils. " The Roman legislature," says he, " gave the persons accused permission to banish themselves " before sentence was pronounced; and they ordained that the " goods of those who were condemned should be sacred, to pre- " vent their being confiscated to the people." We may see in the eleventh book the other limitations that were set to the power the people had of judging.

In the sixteenth and seventeenth chapters of that book Montesquieu gives a most luminous account of the executive and judiciary power in the Roman government, which they who dissent from Blackstone's opinion would do well to consult. It will be impossible for them not to reflect upon the concluding passage of that part in which Montesquieu condemns the admission of the Equestrian order to the right of sitting as Judges. " A profes- " sion," says he, " that neither has, nor can have any other view " than lucre; a profession that was always forming fresh demands, " without ever granting any; a deaf and inexorable profession, " that impoverished the rich, and increased even the misery of " the poor; such a profession, I say, should never have been in-

" vation are wanting which rendered this rigorous interpo-
" sition necessary." But the arguments of Dr. Paley never appeared to me to vindicate what he calls " the lenity of " our laws." When pardons become, as among ourselves they have become, frequent, and when to our sense of justice and compassion they appear necessary, the severity of punishments, in the opinion of Beccaria, and in my own, implies " some absurdity in the laws." To shew mankind that punishments are often remitted, as again and again has

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" trusted with the judiciary power at Rome." *Mutato nomine, de quo* Fabula narratur? Not of any English Judge who now sits upon the bench, not of the many honourable persons who now adorn the profession of the law, but of those wily, rapacious, mischief-making wretches whom every Judge would endeavour to restrain, and every man of virtue would despise and detest.

Of the Athenians Montesquieu thus writes: " Solon knew " how to prevent the abuse which the people might make of " their power in criminal judgments. He ordained that the " court of Areopagus should re-examine the affair; that if they " believed the party accused was unjustly acquitted, they should " accuse him again before the people; that if they believed him " unjustly condemned, they should put a stop to the execution, " and make them rejudge the proceeding. An admirable law " that subjected the people to the censure of the magistracy " which they most revered, and even to their own!" (Book vi. chap. 5) Even an English Parliament may sometimes derive instruction from the regulations of states which in their legislative, executive, and judiciary forms were far inferior to our own. In regard to the observation of Blackstone, though untenable as a general position in theory, and though refuted by facts in the laws and usages of America, it is so true and so important, when applied to the English government, that in any future amendment of our Penal Code the legislature will never presume to place the power of pardoning, however limited, in any other hands than those of the Sovereign.

been observed, is " to nourish the flattering hope of impu-
" nity," and will lead the unenlightened and the depraved
" to consider every punishment inflicted as an act of injus-
" tice and oppression *."

The reasons upon which the clemency of an English Sovereign is exercised, are seldom of sufficient notoriety for any useful purpose. The force of those reasons will be differently apprehended according to the different degrees of sagacity and humanity in the Judge who reports the cases. The frequency of what is called clemency itself, weakens the authority of the laws over bad men, and compels the best men to suspect that laws so unsteadily administered have not been judiciously and equitably framed. When human wisdom has done its utmost, there will still be room for different degrees of delinquency in the same offence, and room, too, for occasional remission of punishment. But this inconvenience, which perhaps is inseparable from human justice, would be much alleviated if clemency were a virtue which " belonged oftener than it now does to the legislator, and " not to the executor of the laws." There would be less room for that Benevolence which, if it be ill-judged, almost proclaims a public act of impunity, and even when it is well-judged, may sometimes *resemble* a tacit disapprobation of the laws. I do not say, with Beccaria, that the executors of the laws should in all cases be inexorable, and in appearance resemble Caligula, who boasted of his ἀδιαφρεψία †. But I do say, that the laws themselves would be more just and more efficacious if legislators were more tender, indulgent, and humane than we sometimes find them—if, instead of considering every crime by itself, as they too frequently do, " they would examine it with reference to other offences, " and if they would regulate their punishments more ac-
" cording to the rules of distributive justice, than they hi-
" therto appear to have done ‡."

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* Vid. Beccaria, chap. xlvi. † Vid. Sueton. in Vit. Cal. par. 29.

‡ Dagge, vol. i. p. 209.

I have read statutes where the framers have with the most minute attention pursued guilt, through almost all possible modifications, and where to each they have been careful "nigrum apponere theta*." But can it be right to affix the last and heaviest punishment to *every* degree of the same offence? *All* circumstances of aggravation and extenuation cannot, I allow, present themselves to the mind of a legislator. But the misfortune is, that from eagerness to prevent the general crime all *distinctions* are so often overlooked, and that so little attention is paid by the laws themselves to "repetition, cruelty, and combination" in the selection of objects for condign punishment †.

We boast with good reason of our progress in knowledge and civilization. But few and indistinct are the traces of correspondent improvement in our classes of punishment. Even when Blackstone's Commentaries on the Laws of England must be supposed to have been recently perused by every member of the legislature, in 1770 "a statute was enacted "by which any person killing game between certain hours, "and convicted thereof, before one or more Justice or "Justices, on the oath of one or more witness or witnesses, "shall for the first or any other offence be once publicly "whipped in the town where the jail or house of correction "shall be: and this," says Mr. Eden ‡, "without any re-"servations or distinctions as to the rank, quality, or fortune "of the offender." Mr. Eden, after mentioning this statute, says, "the tacit disapprobation of mankind consigns such "laws to disregard and oblivion, but they should be re-"pealed." Doubtless they should, for they call to our mind the observation of Beccaria, that "the barbarity and "ferocity of our ancestors, the Hunters of the North, still "subsist among us in part of our laws, which are always "several ages behind the actual refinement of a nation §."

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* Persius, Sat. 4. † Vid. Paley, chap. ix.

‡ Principles of Penal Law, chap. vii. § Chap. 29.

"By statute 31st of George II. it is made felony with-
"out benefit of clergy to set fire to any house, barn, or
"outhouse, or to any hovel, cock, mow, or stack of corn,
"straw, hay, or wood." "This clause," as is well observed in the Principles of Penal Law, "is a strong instance "of the vague, unfeeling, undistinguishing carelessness with "which Penal Laws have been composed even in the most "polished times. The penalty, should in all cases, if pos-"sible, bear some proportion to the malice and mischief "of the offence; but every idea of proportion is obliterated, "when the same degree of guilt and punishment is assigned "to the incendiary of a populous town, and to the des-"troyer of a small heap of dried grass*." Invitus hæc tanquam vulnera affingo. But if from negligence, or false delicacy, or temerity, they are suffered to fester with accumulated venom, "sanari non possunt†."

It might be shown from many instances that the minds of our countrymen, while they were progressive in political knowledge, were retrograde in jurisprudence. In the reign of our immortal deliverer William III. it was enacted, "that all persons who should be convicted of any theft, "and should have the benefit of clergy allowed them, in-"stead of being burnt in the hand, should be branded in "the most visible part of the left cheek, nearest the nose." What shall resist the charms of novelty and reform, especially when they are accompanied with an increase of power? The statute it should seem, was executed with no less zeal than it had been enacted. Offences were committed—offenders were convicted—Faces, old and young, ugly and handsome, carried about them the outward and visible signs of the inward want of Grace. So, however, it happened, that in the fifth year of the very next reign, our legislators, some of whom had, perhaps, been employed in passing the statute, found the necessity of repealing it, and

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* Dagge, vol. iii. p. 176, and Eden, p. 271.

† Livy, lib. xxviii. par. 27.

they had the good sense and honesty to use a preamble which might with consummate propriety be prefixed to the repeal of other penal laws now in force. "It has been "found," say they, "by experience, that the said punish-"ment hath *not had the desired effect*, by deterring such "offenders from the further committing such crimes and "offences; but, *on the contrary*, such offenders being ren-"dered thereby unfit to be intrusted in any honest or law-"ful way, become the *more desperate*."

"If Parliament," says Blackstone*, "had referred the "bill to some of the learned Judges it is impossible that "in the eighteenth century it could ever have been made "a capital crime to break down (however maliciously) "the mound of a fish pond, whereby any fish shall escape; "or to cut down a cherry-tree in an orchard. Were even "a committee appointed but once in a hundred years to "revise the criminal laws, it could not have continued to "this hour a felony without benefit of clergy to be seen "for one month in the company of persons who call them-"selves, or are called, Egyptians."

"In the present age," says the commentator on Bec-caria†, "we seem universally aiming at perfection; why "then do we neglect to perfect the laws upon which our "lives and fortunes depend?" Absolute, or complete, per-fection is, in one sense of the phrase, we all know, unat-tainable by limited agents, and even perfection, if the word be strictly analyzed, must always be relative, and have for its measure‡ the power and the condition of those who aim at it, which at different times, and from different

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* Book iv. chap. 1. † Chap. 22.

‡ "That is in truth perfect that is perfect in relation to "its use and end, *cui nihil deest*, that may be useful and ap-"posite to that end." (Hale on the Amendment of the Laws, cap. 2.)

causes, will have incalculable varieties. Even this relative perfection will be comparative, as between one nation and another, and between different ages and different forms of society in the same nation. But if it be within our reach to lessen the number, or to correct the quality, of any inconvenient circumstances which enter into the comparison, the experiment surely is not unworthy of a free and a civilized people:

"Est quadam prodire tenus, si non datur ultra*."

In England that has happened, which the same commentator wished to happen in France. The laws of humanity have softened some of our rigorous customs without facilitating the commission of crimes, and therefore it is not unreasonable to hope for some reformation in those legal proceedings, "wherein our legislators seem to have "been influenced by too much severity, and our criminal "procedures appear in too many instances to point only "at the destruction of the accused."

It were invidious to point out all the causes which in these later times have led to the multiplication of penal statutes. Too much, I fear, has been granted to the interests and sentiments of commercial men. But let us not forget that the trading and commercial interests by enlarging the wants of mankind have diffused the principle of benevolence, that "if they have promoted self-love they "have with equal pace advanced Union†," and that there is a tenderness and delicacy in the present state of national virtue, which superficial and fantastic writers have vainly endeavoured to resolve into effeminacy, pusillanimity, and selfishness. Above all, let us consider that improvements in arts and commerce have provided employment for the poor; have raised their minds from the sullenness of discontent and the gloom of despondency; have inspired them

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* Hor. lib. i. Epist. 1.

† Dagge, vol. i. p. 308.

with notions of cleanliness and decorum, which it is impossible for men under the pressure of extreme penury to feel; have given them a sense of their usefulness to society, and their claims to protection from it; have supplied them with comforts which make existence desirable, and rescued them from numberless temptations to the violation of the law. The evils (for such they are) arising from the increase of artificial wants, and from the assemblage of large bodies in manufacturing towns, bear no proportion to the moral and the political advantages which I have just now enumerated, and many of which from their very nature carry along with them correctives for idleness and thievery.

Crimes may change their form, as Physicians tell us, that old diseases retreat, and new ones succeed. But if the general health of the body politic be invigorated, as it most assuredly is, by progressive civilization, it seems to me that the sounder parts may be preserved, and the morbid healed, without precipitate and frequent recourse to cauteries and amputations.

In an age of ignorance and barbarism the laws will be tinged with the spirit of the people, and their government. They are capriciously relaxed, or severely enforced. Good men acquiesce, when they do not approve, and the bad may be said to submit, rather than to obey. Slaves are doomed to suffer and to fear. But they are seldom accustomed to reason, and never permitted to complain *.

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* From the concurrent testimony of travellers, who had opportunities to observe, and were under no temptation to deceive, there is not any part of the known world, except Japan, where less value is set upon human life than in Turkey. The character of the people is debased and depraved by the ruthless obduracy of their magistrates, and the sanguinary spirit of their laws. They experience the worst effects which the doctrine of Predestination can produce. They are careless about the preservation of an existence, which caprice or cruelty may in a moment take away. They are indifferent, and even adverse, to all the intel-

In free governments, on the contrary, the very act of enquiring into the grounds and effects of laws is a direct proof of increasing knowledge. It constitutes a presumptive proof of such improvements in the actual state of society as render the former code inconvenient or oppressive; and when the expedients proposed by intelligent men harmonize with the silent wishes of the community, it becomes the duty of every wise and honest legislature to supply what is defective, and to correct what is mischievous.

My observations upon human life will not permit me to take my station among the "Laudatores temporis acti, "se pueris *." It were a false statement, if I were to say, "corruptissimâ Republicâ plurimæ leges †," and it were false reasoning if I should ascribe the improved morals ‡ of my countrymen to the increased severity of their laws, rather than to their religion, their freedom, the mild spirit of their government, and their general progress in science, in arts, and in all the various pursuits which multiply the enjoyments and facilitate the duties of social life. These, co-operating with other causes, will retard the moral resolution of which a philosophical historian speaks with qualified assent. "Rebus cunctis inest quidam velut orbis,

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lectual and moral improvements which might render that existence more dear to the possessor, and more useful to his species. They are at once servile and turbulent, sluggish and rapacious, superstitious and crafty. They disobey without incurring hatred, and they perish without exciting pity. In such a state of things, as the laws have corrupted the genius of the people, neither the experience nor the reflection of the people is likely to produce any correction of the laws. In the mean time military tyranny adds little to the security of the government, and judicial severities contribute yet less to the amendment of individuals.

* Horat. Art. Poet. † Tacit. Annal. lib. iii. par. 7.

‡ "Multa duritie veterum melius et lætius mutata." (Tacit. Annal. lib. iii. par. 5.)

" ut quemadmodum temporum vices, ita morum vertan-
" tur*;" and my grey hairs will be brought down with less sorrow to the grave because I can apply to my countrymen what he said of his own age: " Non omnia apud priores " meliora, sed nostra quoquæ ætas multa laudis et artium " imitanda posteris tulit†." But it might not misbecome our legislators to consider whether there be room for another observation made by Tacitus; for upon comparing the manners of the present age with those of generations which have passed away, intelligent men may be disposed to exclaim‡ " ut antehac flagitiis, nunc legibus laboratur."

Mr. Hume in his third essay, part 1, says, very truly, that " the force of laws and of particular forms of govern-
" ment is so great, and they have so little dependence on " the humours and tempers of men, that consequences " almost as general and certain may be deduced from " them as any which the mathematical sciences afford us." In this country the forms of government are notoriously at variance with the spirit of our criminal laws, and it cannot be too often repeated that the excellence of those forms is perpetually, but most impertinently, adduced as a compensation, and even an apology, for the rigour of that spirit. But if civilization has improved the forms of government, why should it not be allowed to mitigate the harshness of laws? " When men had but newly resigned the privilege of re-
" venging their own wrongs§," it might behove the magistrate to make punishments very severe. But if the causes which regulate human action were carefully considered, it would be found that severity is less necessary when mankind are civilized—that the cruelty of indiscriminate punishment itself counteracts the natural effects of civilization—that instead of softening the ferocity of depraved minds it tends to corrupt and to harden them—and that bad laws act upon society as bad education does upon individuals.

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* Vid. Tacit. Annal. lib. iii. par. 12, Edit. Lips. † Ibid.
‡ Par. 5. § Vid. Dagge, vol. ii. p. 164.

Complaints are made, principles are unfolded, regulations are proposed, and yet penal statutes continue to be multiplied without any visible diminution of the offences against which they are pointed. The study of Beccaria and other writers on jurisprudence, has prepared the best members of the community thus to address their legislators: "νομοθέτας καθιστᾶτε, ἐν δὲ τούτοις τοῖς νομοθέταις μὴ θῆσθε "νόμον μηδένα, εἰσὶ γὰρ ὑμῖν ἱκανοὶ, ἀλλὰ τὰς εἰς τὸ παρὸν "βλάπτοντας ὑμᾶς λύσατε*." Are we a brave people? Do not take advantage of this noble quality, and inflict death upon fellow-subjects who partaking of the national spirit, and influenced by a climate which perhaps aids it, fear not to die, and who under more auspicious circumstances might display their bravery in defence of the public. Are we a free people? Do not make our liberty a plea for dooming us to punishments more adapted to slaves, who in consequence of their slavery "become so obstinate†, ca-"pricious, and resolute as to defy all dangers;" and beware of invading our natural right to life, upon the pretence that our social rights are better secured, and owe their security only to the severity of our laws. If the subjects of Russia have not been corrupted by the remission of capital punishments, why should we look for a less favourable effect from such remission among Englishmen? If culprits doomed to slavery and hard labour in Siberia have been reformed, why should not confinement and hard labour produce the same reformation among ourselves‡?

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* Demosth. Olynth. II. † See Montesquieu, book vi. chap. 13.

‡ In note x. upon page 35 of the work I have before quoted, Mr. Bradford takes an historical view of ancient and modern legislation, so far as it is connected with capital punishments. It is worthy of the most attentive perusal; and I shall select from it that part of the edict by which the Duke of Tuscany abolished

I have already said that little good is to be expected from the repeal of one or two statutes. The system itself

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the penalty of death, and in which are stated the reasons for that abolition. "We have seen with horror the facility with which "in the former laws the pain of death was decreed, even against "crimes of no very great enormity; and having considered that "the object of punishment ought to consist in the *satisfaction* due "either to a private or a public injury; in the *correction* of the "offender, who is still a member and child of the society, and of "the state, and whose reformation ought never to be despaired "of; in the *security* (where the crime is very atrocious in its "nature) that he who has committed it shall not be left at liberty "to commit any others; and finally, in the *public example;* and "that the government, in the punishment of crimes, and in "adapting such punishment to the objects, towards which alone it "should be directed, ought always to employ those means, which, "whilst they are the *most efficacious,* are the *least hurtful* to "the offender; which efficacy and moderation we *find* to consist "more in condemning the offender to hard labour than in putting "him to death; since the former serves as a lasting example, "and the latter only as a momentary object of terror, which is "often changed into pity; and since the former takes from the "delinquent the possibility of committing the same crime again, "but does not destroy the hope of his reformation, and of his be-"coming once more an useful subject: and having considered "besides, that a legislation very different from our preceding one, "will agree better with the *gentle manners* of this polished age, "and chiefly with those of the people of Tuscany, we are come to "a resolution to abolish, and we actually abolish for ever, by the "present law, the pain of death, which shall not be inflicted on "any criminal," &c. (Sect 51.)

"If any credit," says Mr. Turnbull, "can be given to the "authorities of well-informed travellers, the fact of the wholesome "effects proceeding from a change of the penal laws of Tuscany "seems to be sufficiently established. The intelligent Dr. Moore "speaks highly of it in his travels, and no one with more precision

must be changed, and that change must be made by the general revision of our penal code.

We read of an enlightened people among whom "Thes-"mothetæ quotannis in domo publicâ, ubi leges adserva-"bantur, conveniebant, ut viderent ne qua lex alteri con-"traria legi extaret; ne qua irrita inter ratas, neve plures "de unâ et eadem re. Si qua abroganda lex erat, unicui-"que legi abrogandæ quinque ex universis Atheniensibus "eligebantur patroni. Populus, expensis utrinque ration-i-"bus, sciscebat quas leges vellet e nomothetarum consilio "quibus tamen rem omnem committebat, vel antiquari vel "ratas haberi. Hoc legum examen erat valde necessarium in "republicâ Atheniensium, ubi leges cumulandi, abrogandi, "sanciendi pruritus et φιλοκαινία dominabantur *." I am afraid that the "pruritus leges cumulandi" may sometimes be imputed to the fondness of our countrymen for checking new or old crimes by new statutes which inflict capital punishment. But the love of novelty is fortunately not quite so much the national characteristic of an Englishman, as of an Athenian. Proposals for the revision of our penal laws, as we shall presently see, cannot be charged with novelty, and the example which the people of Athens have set us, both for repeal and enactment, may be imitated with perfect safety.

This subject did not escape the notice of the temperate, learned, and sagacious writer to whom we are indebted for

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"to persuade than General Lee in his Memoirs." "In short," says the latter, after dwelling on its policy, "Tuscany from being a "theatre of the greatest crimes and villainies of every species, is "become the safest and best ordered state of Europe." (p. 72.) See also Moore's Travels and Lee's Memoirs as quoted p. 56, by Mr. Bradford.

* See Mounteney's Note on sect v. of 2nd Olynth. and the authors there quoted by him. See also Harpocrat. in voc. θεσμοθέται.

many valuable observations upon our ancient statutes. He has favoured us with a proposal for new modelling them, and at the same time tells us, that by "the term "reformation he does not mean to make a new arrange- "ment and institute of the whole body of the law, as in "the time of Justinian or Code Frederique." I give no opinion upon the propriety of reforming our civil code. But the precedent which he mentions of an attempt to reconsider the penal statutes of the realm, in the time of James I. will justify me in expressing my hope, that in better times this great point will "be sooner or later attended to." Our penal laws are, I am sure, not in a much better condition now than in the reign of James. But the general principles of Jurisprudence have been more accurately investigated by learned foreigners, and by our own countrymen. The state of society is more favourable to increased lenity than it was in remote ages, and persons may be found not less qualified for the task than the excellent men* whom James selected. We are in no danger of a *parliamentum indoctum*, such as our forefathers saw, nor shall we ever read a royal proclamation in which "the voters for members of "Parliament are directed not to choose curious and wrang- "ling lawyers, who may seek reputation by stirring needless "questions†."

The House of Lords is a permanent body, and abounds with well-informed men, whose presence would give "di- "rection" and "valuable assistance," as well as "solem- "nity‡" to the revision of our penal statutes. It would be a work of time and deliberation. But I see nothing in the

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* Lord Chief Justice Hobart, Mr. Serjeant Finch, Mr. Heneage Finch, Mr. Noye, Mr. Hackwell, and Lord Bacon himself were employed for a considerable time in this undertaking, and had made some progress in it. (Barrington, p. 500.)

† See Barrington, p. 337. ‡ See Paley, chap. viii.

constitution of the House of Commons which should prevent the appointment of a Committee*, the labours of

* Hale proposes, that in the amendment of the laws "The King, with the advice of both Houses of Parliament, should require the Judges and other sages of the law to prepare bills—that no man should intermeddle in so great a business without the most authentic injunction by the King and his supreme council—that bills should be presented to the House of Commons in the first instance—that when they have been once or twice particularly debated in the Committee, the Judges should be called to a solemn debate at the Committee of the Commons, where they may give the reasons why they go so far and no farther, and where their opinion will be asked touching any alterations or amendments, and the reasons in relation thereto, lest a very good and profitable bill be suddenly spoiled by a word inserted or a word expunged—and that when the bill comes to the Lords, and is twice read and committed, all the Judges should attend the Committee for the reasons above given." (Ch. 4.)

These are excellent regulations. The reform which I hope will one day or other be accomplished in our Penal Code, is so extensive that it cannot be effected by the authority of courts and Judges, without troubling Parliament. My wish is, that sages of the law should not be employed in it exclusively; that the Committee should consist not only of members in both Houses of Parliament, but of able lawyers who are not in Parliament; that some of the Judges should form a part of the Committee; that in cases of difficulty they should be consulted by the Committee; and that when the Code is brought before the Lords, and while the merits of it are debating, the Judges should attend in their places and give their opinions. After all, if the business were undertaken seriously, it would be easy to adjust any difference upon the duties which are to be assigned to the Judges. So again, I should gladly give up my opinion upon reforming the whole code at once, if I were convinced that the legislature were earnestly bent upon revising and reforming every part of it *seriatim*.

which should continue from year to year, and in which vacancies made by the death of members, or by their not being re-elected to Parliament, should be filled up. The assistance of Lawyers most assuredly should not be wanting, and it would be well if some of them were "persons "not sitting in Parliament." But I confess that I should expect little progress to be made in so great a work, if only "one or two Barristers should be appointed, who "from year to year might make a report to the Privy "Council, as likewise to the Lord Chancellor, the Master "of the Rolls, and the twelve Judges, of a certain number "of statutes which should either be repealed or reduced "into one consistent act*."

When Mr. Barrington proposed the foregoing expedient, and when Judge Blackstone† spoke of a Committee appointed but once in a hundred years, they probably were influenced by professional prejudices which may be easily pardoned, but not very safely adopted. Many enlightened men may not be prepared to entrust the venerable persons

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The cause for which I am solicitous has found a most able advocate in Dr. Colquhoun. "Some steps," says he, "have "indeed been taken in Parliament towards a general revision of "our statute law, (See the 'Report from the Committee of the "'House of Commons on Temporary Laws,' May 13, 1796, "and also the 'Report from the Committee for Promulgation "'of the Statutes,' December 5, 1796, and the 'Resolutions "'of a Committee of the whole House,' May 30, 1797,) and "which, it is hoped, will ere long be adopted. Whenever the "time shall arrive that the existing laws, which form the present "Criminal Code, shall be referred to able and intelligent men "effectually to revise, consolidate, and adjust the whole in a "manner best suited to the present state of society and manners, "the investigation will unquestionably excite no little wonder "and astonishment."

* See Barrington, p. 503. † Book iv. chap. 1.

of whom Mr. Barrington speaks, with a discretionary power of permitting, or forbidding any statute to be laid before Parliament*. But their opinions when delivered *in* Parlia-

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* I fear the prejudices of professional men, when they are *exclusively* employed as guides to Legislators. "Coke thought it "would be a great defect in government, to have such devilish abo- "minations as sorcery and witchcraft to pass with impunity." (Eden, p. 102.) Hale, who has made many judicious remarks on the *general* unfitness of the Jewish laws in Christian countries, yet supposes it a murder, if a man wilfully suffers a beast notoriously mischievous to wander abroad, and it kills a man. His reason is, that by the Jewish law the offender was to die; and he mentions a report of a person who had been actually executed on this account. (Eden, p. 236.)

After printing my observations upon the punishment of an innocent man, I met with a passage in Mr. Eden's book which had escaped my notice, and which I will here produce, as it is materially connected with the subject which I was then discussing.

"Let us suppose," says Judge Foster, "the case of an "upright and deserving man, universally beloved and esteemed, "standing at the place of execution, under a sentence of death "*manifestly unjust*. This is a case that may well rouse the "indignation, and excite the compassion of the wisest and best "of men. But wise and good men know that it is the duty of "a private subject to leave the innocent man to his lot, however "hard it may be, without attempting a rescue: for otherwise all "governments would be unhinged." (Foster, page 316, quoted by Eden, page 327.)

"The worthy Judge," says Mr. Eden, "seems to have "made an *unpleasing*," (I say fallacious,) "distinction between "the stability of governments, and the private rights of the "people. The stating of the case now before us supposes ab- "solute certainty as to the injury, and excludes all possibility "of popular misconception. It is difficult to persuade oneself

ment would deservedly have great weight, and they might be occasionally consulted upon particular questions by one

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"that in such a case the resistance of the byestanders would be "unjustifiable." (Page 238.)

I am not fond of disputing upon extreme cases. But when proposed by writers whose acknowledged virtues and distinguished talents give authority to their conclusions, they must be treated according to their real merits.

In a single case, then, of this kind, I should admit the premises, and deny the inference. The individual may be rescued. But the government would *not* be unhinged, and the laws would be left to their usual proper and full efficacy against *real* offenders. If the cases were frequent, the laws, or the administration of them, must be faulty; and the government neglecting to remedy the evil ought to be altered—by persuasion, if it be possible; or if it be not, an humane and enlightened people would hardly fail to accomplish the alteration by force. Even with the remote prospect of such an event, a wise legislature would employ every seasonable expedient to avert it.

As to wise and good men, they are likely to be more patient under an iniquitous sentence executed upon themselves, than upon other men; they would beware of forming any fixed rule for their own conduct *before* the time of trial; and by nothing short of manifest danger to the community would they be deterred from resisting such manifest oppression to an injured fellow-creature.

Fortunately in this kingdom we are in little or no danger of being called upon by such an occasion to decide between obedience to the magistrate, and justice not only to an unoffending individual, but to all other of our fellow-subjects, who must appear to have a personal interest in his fate.

Strong must have been the influence of professional partiality on the mind of Foster, when he stated such an unusual supposition, and assigned to it such consequences as men generally ascribe to the most flagrant overt-acts of high treason. But is it

or more members of the Committee. Our Penal Code is not, like the Civil, burdened with subtleties and distinctions which require the aid of a professional education. In both houses of Parliament persons may be found, who with little difficulty would know what "provisions * the laws "have already made to remedy the mischief complained "of; who could calmly and maturely consider in what "instances those provisions have failed;" who could appreciate justly the value of information afforded them by persons of experience in the administration of the laws, and who, to say the least, are quite as likely to judge without prejudice on the probable consequences of proposed alterations. If the Committee of which I am speaking were established in this country, the duties of it would, I think, be discharged most effectually by mingling professional men with other persons whose experience in the affairs of

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quite safe to vindicate the ordinary and actual practice of Jurisprudence by extraordinary and hypothetical cases, which are better adapted to the wildness of speculation? Is it necessary to secure the authority of the laws which give effect to a just sentence, by pointing out the mischiefs of resistance to that authority, when a sentence is so glaringly unjust? The calm and dignified discretion of a Judge ought never to be lost in the misty subtleties of a casuist, or the licentious exaggerations of a rhetorician. He may dogmatize without contradiction upon the bench; but he cannot err in a book without the hazard of detection and reproof. Blackstone wrote his Commentaries in the stillness of academic retirement: his timidity or his policy sometimes led him to acquiesce in received opinions; and his eloquence is now and then displayed in defending, when his reason should have been employed in examining them. But the reports of Foster are chiefly founded upon practice; he was a soberminded, upright, and truly conscientious Judge, and therefore his decisions even upon ideal cases might have the greater weight.

* Blackstone.

common life was large and various, and whose minds were richly stored with that knowledge which is supplied by the science of ethics, by the history of ancient and modern legislation, and by the comparison of the political and moral circumstances which influence our own national character with those which prevail in the other civilized states of Europe. To men thus qualified to judge upon facts and principles, causes and effects, the language of Gravina, on a subject connected with the civil laws of Rome, would not be uninstructive nor uninteresting. "Quoniam nihil "certi exploratique comprehendere possumus, nisi quod "hauriamus de fonte naturæ; ideo tantisper a matre veri- "tatis philosophiâ facem illam arripiam, quâ per tenebri- "cosum iter, et opinionibus obsessum libere percurram "ad ea primordia, unde veritas protrahatur in lucem. "Qui enim adhuc scriptis suis imperii fundamenta jecerunt "e Juris consultis recentioribus, non tam abstrusas naturæ "notiones, quam auctoritates, et opiniones pro certis firmis- "que principiis tradiderunt: et quæ consequentia esse debuis- "sent, pro antecedentibus acceperunt *." Knowing, says Mr. "Eden, that political wisdom is the result of experience rather "than of theory, they will consider the safety of the public "as the supreme law of policy, and if compelled in any "degree to deviate from the sacred principles of justice "and humanity, they will submit to the deviation merely "as an occasional result from the imperfection of our na- "ture. But they will never allow, that among crimes of "equal malignity those which the offender has the strongest "inducement to commit should always be punished most "severely. They will consider it as a position both mo- "rally and politically false, to maintain without limitation "and without distinction, that legislature may justify the "infliction of whatever degree of severity is necessary for "the prevention of any particular crime †."

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* Gravina de Orig. Jur. Civil. vol. i. page 106.

† See Principles of Penal Law, chap. 2.

" Trebonianus," says Mr. Barrington *, " has been much " condemned by the writers on the civil law, who when " Justinian had allowed him and his assistants ten years " for compiling the Pandects, from a too great desire of " dispatch published the collection in three." The Penal Laws of England happily do not occupy quite so large a space as the Pandects. They are more within the reach of enquirers, than the matter which Trebonian had to select and methodize from a confused mass; and the task of reviewing and reforming them, if committed to enlightened and truly patriotic men, might without any improper " desire of dispatch" be executed in a shorter time than Justinian allowed.

What errors, and what contradictions throng upon our view, when we impartially look to the practices either of past ages, or of our own! How much is there to humble and to affright us, when we seriously reflect upon the marvellous lethargy or the crooked abuse of our boasted faculties " in the things which belong to our peace!" Man, a frail and fallible being, will sometimes be content to let his " strength be the law of justice," and sacrifice the sweet charities of social life to the fascinations of that " fear " which is little else than a betraying of the succours which " reason offereth †." But the Deity, as I have read in a most wise and holy book, " delighteth not in the destruction " of the living: He knoweth of what we are made," and hath directed his creatures not only " to judge with the " judgment of truth," but to " shew compassion every " man to his brother;" not only " to do justice, but to *love* " mercy."

What the unknown writer of the Dialogue de sui sæculi oratoribus, says of his intercourse with Marcus Afer and Julius Secundus, you and I must have experienced towards some illustrious persons of our own days. " Eos in " senatu non modo studiose audiebamus, sed domi quoque,

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* Page 503. † Wisdom.

"et in publico affectabamus, ut fabulas quoque eorum, "et disputationes, et arcana semotæ dictionis penitus exci- "peremus *."

About four years ago I was present at a most interesting conversation between a very learned person who presides in our Ecclesiastical and Admiralty Courts and Mr. Fox, upon the rigour of our Penal Code, and upon the responsibility of those who administer it to the judgment of the public. That conversation gives me abundant reason to believe that Mr. Fox, if he were now among us, would dissent from scarcely one of the opinions which I have here submitted to your consideration.

If Mr. Fox had lived to assist in allaying the storm by which Europe is now agitated, that mind which had provided redress for African slaves, would, I trust, have been turned with due wariness, but due firmness and activity, to the relief of those unhappy wretches at home, who "in the world, and the world's law" often "find no "helper;" who are pitied for a moment, and in a moment forgotten; and who perish without leaving any lasting impression of terror from their sufferings, which almost cease to be exemplary, when they are frequent, excessive, and promiscuous. He would have transferred to legislation the spirit of a passage in which an ancient writer pleads for the equitable and humane administration of the laws. "Nolo accusator in judicium potentiam afferat, non vim "majorem aliquam, non auctoritatem excellentem, non "nimiam gratiam. Valeant hæc omnia ad salutem inno- "centium, ad opem impotentium, ad auxilium calamito- "sorum. In periculo vero et pernicie civium repudien- "tur †."

He would have brought to the task an understanding quite unfettered by professional and national prejudices,

* Tacit. Dialog. de Orat. † Orat. pro Muræna.

undismayed by dastardly and fantastic fears, enlarged by historical, philosophical, and practical views of human nature, uncorrupted by the insolence of wealth and power, exquisitely sensible of the allowances to be made for human frailty, and anxious to blend the general security of society with the exercise of lenity to individual offenders. "Accustomed," like the enlightened Guardian of the Laws whom Beccaria describes *, "to behold truth and not to "fear it, and contemplating mankind from the most ele- "vated point of view, he would have considered the nation "as his family, and his fellow-citizens as brothers." Knowing with Montesquieu †, that "in moderate governments "the love of one's country and the fear of blame are res- "training motives, capable of preventing a multitude of "crimes, and that the laws therefore do not require so "much force and severity," he, like a good legislator, "would have been less bent on punishment than on pre- "vention, and more attentive to inspire good morals than "to inflict penalties."

He would have considered "the implacability of a "Judge as becoming a virtue only ‡" when it is joined to a mild legislation. The same accuracy of judgment which in the present state of things represented clemency to him "as the noblest prerogative of the Throne, but at the "same time a tacit disapprobation of the laws," would have induced him to recommend and to practise it "as a virtue "which peculiarly belongs to a legislator, and which ought "to shine in the code rather than in private judgment §."

Though in political discussions he might have distinguished between the spirit and the letter of the laws, yet in *framing* them he would have guarded against the dangers practically arising from the distinction, and by giving precision and perspicuity to the letter, he would "have

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* Chap. 42. † Book vi. chap. 9.

‡ Vid. Beccaria, chap. 27. § Ibid. chap. 46.

" put a stop to that fatal liberty of explaining, by which " the life and the liberty of a delinquent *may* become vic- " tims to the false idea or ill humour of a Judge who " mistakes the vague result of his own confused reasoning " for the just interpretation of the laws *." He would have endeavoured " by a judicious penning of the laws, to " create a detestation of the crime forbidden, and by dint of " reason and persuasive argument to convince the judgment " that the prohibitions and penalties included in them are " just and expedient for the good of society." He would have pondered again and again upon the sage observation of Montesquieu, that " a legislator desirous of remedying " an abuse, *thinks of nothing else;*" that " his eyes are open " only to this object, and shut to its inconveniencies;" that " when the abuse is redressed, only the severity of " the legislator is seen, yet an evil springing from it re- " mains in the state, where the minds of the people have " been corrupted, and are become habituated to despot- " ism †." He would have remembered that " men in mo- " derate governments especially are more to be led by " reason than terror; and that the compassion mixed with " indignation which the execution of a criminal excites, " occupies the mind much more than that *salutary* fear " which the laws should endeavour to inspire ‡." Wishing to follow " nature, who has given shame § to man for a

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* Vid. Beccaria, chap. 4. † Vid. Montesquieu, book vi. cap. 12.

‡ Vid. Beccaria, chap. 28, and Dagge, chap. iii. sect. 2.

§ The effects of Shame are well described by Bishop Taylor: " There cannot easily be a great shame amongst men, but " there must be a great fear of vengeance from God; and the " shame does but antedate the Divine anger, and the man feels " himself entering into it, when he is enwrapped within the " other. A man committing a foul sin, which hath a special

" scourge," he would have employed this " best instrument " for the promotion of morality, and the extirpation of " vice," in many classes of crimes upon which death *is* now inflicted with little effect: and to the most odious of those classes he would have assigned *very* great pain united with *very* great infamy. But he would have used the same instrument with œconomy and discretion, by confining it to offences which from their own nature are shocking to our feelings; " not frequently, because the power of opi- " nion grows weak by repetition; nor upon many persons " at the same time, because the infamy of many may ul- " timately resolve itself into the infamy of none *." He would have looked back to the past with pity, and with solicitude have provided for the future. He would have prevented the first advances to guilt, by furnishing the

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" dishonour and singular disreputation amongst men, is like a " wolf espied amongst the sheep: the outcry and noises among " the shepherds make him flee for his life, when he hears a " vengeance coming. And besides in this case, it is a great " matter that he perceives all the world hates him for his crime, " and that which every one decries must needs be very hateful " and formidable, and prepared for trouble." (Ductor. book i. chap. 1.)

I am sorry that I omitted that Rape was an high aggravation of the guilt of Robbery, in the wicked youth to whose case I adverted in page 394. But this circumstance does not alter my opinion upon the inefficacy of his death as an example, when it was inflicted with so little publicity. Surely Judges would not be blameable, if they occasionally gave directions about the time, place, and manner of executing criminals.

* See Montesquieu, book vi. chap. 12. Eden on Penal Law, chap. 7. Dagge's Criminal Law, chap. ix. sect. 2; and Beccaria, chap. 23.

lower classes of men with that instruction which points out to them the usefulness, as well as propriety of diligence, temperance, and honesty; and the danger, as well as the loathsomeness of every vicious habit. He would have made their relapse into guilt, after the commission even of great crimes, more difficult and more inexcusable, by supplying them with employment, which from the defects of the police, or the suspicions of individuals, it is impossible for them now to find, and by giving them encouragement so to persevere in a better course of life as gradually to recover the good opinion and good will of their fellow subjects, and ultimately to make reparation for the wrongs they had done to the community.

I have stated my opinion upon various circumstances which seem to me favourable to the speedy revision of our penal laws. Obstructions there may be from the nature of power itself, "which in all countries, and at all times, "is on the watch for every opportunity to extend its own "sway, and maintain by terror what it acquired by force "or cunning: from the prejudices of education, which "induce men to think those regulations just and expedient "of which their forefathers had approved: from that in- "dolence which leads men who cultivate the arts and "sciences to leave the wheels of government to chance: "from that timidity or indifference to public concerns "which makes other persons tacitly acquiesce under in- "stitutions which their judgment condemns: from that "courtesy with which many ingenious and learned writers "have expatiated with more liberality than reason on the "merciful disposition of the English government; as if it "were their object rather to write the panegyric than to "make known the imperfections of the constitution*: and "perhaps from the jealous and captious resistance, it may "be, of certain classes in which prepossession, or vanity,

* Vid. Eden, p. 233.

"or ambition may have created a real or an imaginary "interest in the continuance of imperfect and even perni- "cious systems*."

From men who are "distracted by the cares, or dissi- "pated by the pleasures of the world," little is to be expected in removing those impediments. But the general good-sense and benevolence of the English people, the information already supplied by sober and intelligent enquirers, the wishes so often and so earnestly expressed by good subjects and good men, and the gradual preparation of the public mind for a public experiment, are more than sufficient to counterbalance any known or any probable disadvantage to the cause of humanity.

For the constitution which we now enjoy we are indebted to many various causes, in many successive ages—to the sagacity of statesmen—to the fortitude of patriots—to consequences which fell not within the good or the evil intentions of the primary agents—to the jealousies, as well as confederacies, of powerful classes—to the defeats, as well as successes of contending parties—to the weaknesses and vices, as well as the talents and virtues of the ruling powers. But a constitution worthy of remaining, or even likely to remain, among a civilized people, never has been contrived, nor ever will be, by any one man, or any one body of men. The reasons are obvious, and deserve to be stated by me, because they have little or no place in that reform of our Penal Code which I am solicitous to see accomplished. In governments, what is old may be suddenly overthrown; but what is new, cannot be suddenly established. What is really improved in the old will not blend with the new, and what deserves to be adopted in the new, is marred by the old. Amidst the fluctuation of public opinions, and public interests, not only usage loses its authority, but even novelty is soon deprived of its charms. That which pleased

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* Vid. Dagge, vol. i. p. 271.

yesterday, will to-day displease, and that which to-day is zealously approved, may to-morrow be rejected with equal zeal. Habit maintains an irregular but stubborn conflict with passion. Timidity performs the office of prudence, in throwing checks upon zeal. Some comply with reluctance, and others oppose from perverseness. Some condemn before they understand, and others are on the watch to overset what they profess to approve. Almost every change is to be effected by the violence or the cunning of faction, and every wholesome, as well as every pernicious provision, is liable to be baffled by events which can neither be controuled by the strongest, nor foreseen by the shrewdest agents of real or pretended information.

But no objections of this kind seem to lie against the complete revision and amendment of our Penal Code. On the contrary, it is to be effected in quiet times. It is to be consigned to intelligent men, who have no personal views to be gratified by the attainment of the end, nor any such party-spirit of difference in opinion, as would irritate and distract them in the choice of means. It presents no allurements of power to the ambitious, nor any opportunities for mischief to the turbulent—it leaves the form of government unaltered—the energies of it unmolested, and the general fabric of society unimpaired. It chiefly relates to the common motives and common effects of human action in *common life*—it carries with it every useful property which practice, whether ancient or recent, can supply for correcting the refinements of theory—it combines all the advantages of legal science and professional experience—of policy regulated by principles of justice, and patriotism guided by the love of order.

Such a reform will *not* be one of those changes which Hale describes as " ungrateful and unacceptable to the people, " introducing jealousies and divisions among them, giving " a handle to busy and turbulent spirits to insinuate into " them the bad consequences that may ensue upon such " change, and preparing their minds for disturbance." It will not be influenced by a " certain restlessness and nauseousness " of men in what they have, or by a giddy humour after

" somewhat which is new, and possibly upon no other ac-
" count but because it is new." It will not gratify that " passion
" of self-love which makes men think that they in their own
" particular, have received some personal mischief by the
" present constitution of laws, and that whatsoever crosses
" them in their interest or concerns is unjust, and fit to be
" altered." It is professedly founded on those " variations in
" the actions and concerns of men which time has already
" effected," and will be accommodated so far as human wisdom, reflecting on the past and providing for the future, can accommodate it to the " condition of multitudes in various
" successions of ages, and the occurrences or emergencies
" thereof." It is to be regulated by " an estimate made, not
" upon single occurrences that are to be remedied, but upon
" the whole account of profit and loss—not upon this or that
" particular commodity, but upon the whole cargo." It will be conducted, not according to the rash assumptions of those " *qui ad pauca respicientes facile pronunciant*, but upon
" a full comprehension and circumspection of all things that
" are requisite" for the very difficult and very important task. It will in its substance contain only " such new appendica-
" tions as do not so much constitute a new law as amend
" the old; so that notwithstanding these appendications our
" penal code will still morally remain the same code, as the
" Argonaut's ship was the same ship at the end of their voy-
" age as it was at the beginning, though there remained little
" of the old materials but the chine and ribs of it." Committed, as I trust it will be, to such persons as I have described, it will leave us little to fear from the infirmities which befal men of parts who overrate what they do know, and are impatient of what they do not know; who confound " the principles of Jurisprudence with the fallacy or
" strength of a syllogism; who are unwilling to spare much
" pains for the acquest of knowledge in the laws; who look
" upon their own reason as much undervalued if it be told
" them that law is reason; who are presently apt to say they
" understand reason; and who, thinking it below them to be
" ignorant of any thing, blame the law when they under-
" stand it not." As persons trained, some to the study, and

others to the practice as well as study of the law, will unite their endeavours with those of accomplished senators and experienced statesmen, there can be no ground for imputing to them either that "vain-glory which induces men "to tamper to get a name"—or that ambition "by which men "like Absalom take the first step for lifting themselves up "into place and power, by reforming the constitution or "administration of the laws"—or that fear "which urges "usurpers to remove such laws as sit too hard and uneasy "upon their usurped power, to engage the generality of "men in the acting under new laws, and to give them a "common interest in a common defence against the true "and just power, by the restoration of which new laws would "be repealed, and new interests founded upon them would "be endangered—or that envy and malice which Hale sup-"poses many persons might entertain, not only at the pro-"fession of the law, but at the professors of it, upon the "account of their wealth, power, number, wisdom, and the "necessary use of them *."

Hale in his "Considerations touching the Amendment of Law," speaks chiefly of our civil code, and in the detail has dwelt upon two topics which have since been under parliamentary consideration—The reforms of office, and the Crown lands. But his general remarks are equally applicable to our civil code and to the fundamental rules of our constitution, and I will produce some of them from a conviction that they cannot be reasonably employed in opposition to the reform of those Penal Laws, which experience has shown to be inefficacious and inconvenient upon principles of policy, as well as irreconcileable to principles of justice and humanity. "Time and long experience is much more ingenious, subtile, "and judicious, than all the wisest and acutest wits in "the world co-existing can be. It discovers such varieties

* See Hale on the Amendment of Laws, cap. 2.

" of emergencies and cases, that no man would otherwise " have imagined. And on the other side, in every thing " that is new, or at least in most things, especially relating " to laws, there are thousands of new occurrences and in- " tanglements and coincidences and complications, that " would not possibly be at first foreseen. And the reason " is apparent; because laws concern such multitudes, and " those of various dispositions, passions, wits, interests, con- " cerns, that it is not possible for any human foresight " to discover at once, or to provide expedients against, " in the first constitution of a law. Now a law that hath " abidden the test of time, hath met with most of these " varieties and complications; and experience hath in all " that process of time discovered these complications and " emergencies, and so has applied suitable remedies and " cures for these various emergencies. So that in truth " antient laws, especially, that have a common concern, " are not the issues of the prudence of this or that council " or senate, but they are the production of the various " experiences and applications of the wisest thing in the " inferior world; to wit, time, which as it discovers day " after day new inconveniencies, so it doth successively " apply new remedies: and indeed it is a kind of aggre- " gation of the discoveries, results, and applications of " ages and events; so that it is a great adventure to go " about to alter it, without very great necessity, and un- " der the greatest demonstration of safety and convenience " imaginable *."

Yet when such necessity is supposed to exist, the interest which the higher classes of the community have, and are conscious of having, in reforming the laws, produces at least gradual and partial reformation. The inconvenience is felt by many, and therefore many are solicitous to remove it by their complaints, or their influence, or their authority. But in the views which wealthy and

* Hale, cap. 1, p. 254, vol. i. of Hargrave's Tracts.

powerful men take of human life, the concern they have in the Penal Code is in their apprehension remote, so far as the rigours of that code are likely to affect themselves; and they look to the protection which it affords to them, without pitying the hardships which it may unnecessarily inflict upon other men, and without calculating the probabilities of being equally protected by well-timed and well-considered changes in the kinds and degrees of punishment. As *classes*, indeed, they may be in little danger from the present state of things. But, as *individuals*, they will do well to meditate upon the uncertainty of human affairs, upon the weakness of human nature, and upon the possibility of being themselves pushed on by unforeseen incentives and in unforeseen circumstances to the perpetration of crimes at which they now shudder. The most prosperous man may fall into adverse fortune, and be seduced into fraud—the best-tempered man may be hurried by sudden passion into murder—the most upright and peaceable man may in some future condition of public affairs be irritated or decoyed into treason—every man in every situation, who "thinketh that he standeth," will upon reflection find abundant reason to "take heed lest he fall." Independently of these considerations, which are more immediately and more visibly personal, every man has an indirect interest in the exercise of justice and humanity from every human being to every human being in every rank of society. He has a direct interest in the efficacy of the laws, as they tend to restrain or harden offenders—as they satisfy or disgust by the force of example—as they now upon the whole produce more good or harm, and as in consequence of reform they may hereafter produce greater good and less harm. From the love of esteem, and other social sympathies, which for the wisest purposes have been planted in the heart of man, he has at least an ideal interest in the opinion which is formed of the very same laws by those who are to obey, as well as those who are to frame and administer them—by intelligent observers at home and abroad—by the present generation and by posterity. The

States of America, and European nations more or less civilized, direct their attention more particularly to England; and painful it is for an Englishman to recollect that in our Penal Code they discover what in their own judicial regulations they ought to avoid, rather than what they ought to imitate *.

They who watch with unceasing jealousy against every real or imaginary infringement upon their political liberty, are often inattentive or indifferent to those encroachments which are made by Penal Laws upon their civil rights. They seem to forget that opportunities, and even provocations for offending against the public authority of a state, seldom occur—that the temptations to commit such offences are in the first instance usually confined to the powerful, and therefore the few—that the dangers to which the many are exposed, lurk in a nearer quarter, and that the possible events of every passing day give every subject of every condition an interest in the grounds and tendencies—in the enactment and administration—of those laws which operate directly and constantly upon the concerns of private life.

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* They who wish to see the varied rigours of punishment as suggested by imperfect policy, barbarous manners, blind superstition, or feudal tyranny, would do well to consult Disney's "Collection of ancient laws against immorality and profaneness." It is a treasure-house of facts, which must amply gratify the curiosity of readers, severely exercise their compassion, and awaken many useful, but painful, reflections upon the miseries which man has been doomed to suffer from the ignorance, caprice, rashness, and cruelty of legislators. When the political, civil, and Penal laws of different nations in different ages, fill so many volumes, to what principle of human action in error, prejudice, indolence, pride, or revenge, is it owing that regulations uniting justice with lenity, and authority with wisdom, in the prevention of crimes, are so rare?

In the reform of our Penal Code the most wise, most virtuous, and most powerful members of the community may be called upon to lend their aid, not only by their pity for the sufferings of unhappy offenders, their respect for the credit of the laws, and their solicitude for the honour of their country in our own and every succeeding age, but by the duty which as men and as subjects they immediately owe to *themselves*, their *families*, and their *posterity*. "These enquiries," says the amiable and enlightened author of the Principles of Penal Law, "deserve "the attention of every man amongst us. For no rank, "no elevation in life, no conduct how circumspect soever, "ought to induce any reasonable man to conclude that "the penal system doth not, nor possibly can concern "him. A very slight reflection on the numberless un-"foreseen events which a day may bring forth, will be "sufficient to shew that we are all liable to the imputation "of guilt; and consequently all interested, not only in "the protection of innocence, but in the assignment to "every particular offence of the smallest punishment com-"patible with the safety of society*."

Far above all heroes, and far above all politicians, as we usually find them, would be that benefactor to his species† whose wisdom should have taught him to set a

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* See Mr. Eden's work, p. 130, where he quotes a most solemn and instructive passage from the Preface to Foster's Crown Law.

† In justice to the memories of Mr. Bradford and Mr. Lownes, I will produce the following just eulogium upon these worthies from M. Rochefoucauld Liancourt. After mentioning with praise the Quakers, he thus proceeds.

"Un d'entr'eux (Caleb Lownes,) en a presqu' à lui seul "tout l'honneur. La doctrine de Beccaria et d' Howard a "promptement germé dans son cœur tout humain. C'est lui

right value upon the life of man—whose eloquence in legislative assemblies should cause " mercy and truth to meet

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" qui a principalement animé ses frères de l'espérance de son
" execution. C'est lui qui a provoqué le changement de régime
" dans les prisons; qui a proposé d'y substituer la douceur, la
" fermeté et la raison aux fers et aux coups; qui s'est laissé
" patiemment traiter de visionnaire, sans ralentir ses démarches,
" dans l'entière confiance du bien que sa persévérance opérerait.
" C'est lui dont le zèle infatigable, intéressant à sa cause tous
" ceux qu'il croyait pouvoir l'aider dans sa réussite, a obtenu
" de la confiance de la législature, ces loix, je ne dis pas seu-
" lement de bienfaisance, mais de justice stricte, de polotique
" bien entendue. C'est lui enfin, qui consentant à être élu
" inspecteur à chaque nomination, est l'agent principal de cette
" œuvre respectable de raison et d'humanité. Que Dieu benisse
" cet homme de bien!

" J'ai dit que les juges avaient été d'une opinion contraire
" a cet établissement. Un d'entr' eux, plus jeune que les autres,
" désespérant moins par conséquent, de l'espèce humaine, a
" embrassé avec ardeur ces nouvelles idées. Il s'est associé à
" Caleb Lownes pour toutes les démarches, il l'a aidé des con-
" seils qu'un homme versé dans la jurisprudence pouvait seul
" donner, et a partagé ainsi le désir, les peines et et le mérite de
" ses succès. Ce juge est William Bradford, alors Attorney-
" général de Pensylvanie, depuis Attorney-général des Etats-
" Unis, et mort récemment, honoré des regrets et de l'estime
" générale de ses concitoyens. Il mérite sans doute un hom-
" mage particulier que je lui rends avec d'autant plus de plai-
" sir, que ce n'est pas une censure pour les autres juges."
" car ceux-ci, en se refusant à sanctionner de leur approbation
" le nouveau système, n'ont été guidés que par le doute sincère
" que leur expérience leur donnait sur son succès; et ils se sont
" hâtés de l'aider de tous leurs moyens, dès qu'ils en ont vu
" l'apparence, sans être arrêtés par l'opinion différente qu'ils
" avaient exprimée: ce qui certes sera un mérite peu commun

" each other," and under whose auspices should arise an order of things more worthy of man as a moral, and more adapted to him as a social being, than the golden age pourtrayed by poets, or the Millenium panted for by enthusiasts.

" Adsit
" Regula, quæ pœnas peccatis irroget æquas
" Incolumi Jove et Urbe*."

" If these truths," says Beccaria " should haply force " their way to the thrones of princes, be it known to them " that they come attended with the secret wishes of man- " kind, and tell the Sovereign who deigns them a gracious " reception, that his fame shall outshine the glory of con- " querors, and that equitable posterity will exalt his " peaceful trophies above those of a Titus, an Antoninus, " or a Trajan†."

The wishes of a beneficent Sovereign are made known to the people of England by the measures which, with his approbation, are proposed through his ministers in Parliament. The clemency manifested again and again by the person who now sits on the throne justifies me in the hope, that if the times were more quiet, and if a proposal were made for men duly qualified to be employed in reforming our Penal Code, no obstacle would be thrown into the way of such reform by the will of the Monarch. Be this as it may, You and I, dear Sir, shall ever deplore

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" aux yeux de ceux qui connaissent les erreurs ordinaires de " l'amour-propre."

(See Voyage dans les Etats-Unis d'Amérique, fait en 1795, 1796, et 1797, par la Rochefoucauld Liancourt, vol. vi. page 262.)

* Vid. Hor. lib. i. Sat. 3, and lib. iii. Od. 5.

† See Beccaria, cap. xxvij.

the causes which prevented Mr. Fox from having any opportunity to direct the whole force of his mind to the redress of what appear to me our most indisputable and most intolerable grievances*. Keener too, must be our mortification because in this arduous, but glorious atchievement, he might have called in the aid of Lord Erskine,

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* Upon reading the third chapter in the eighth book of Lord Bacon de Augmentis Scientiarum, I had the satisfaction to find, that in many respects he held the same opinions which I do, upon the qualifications of legislators, the danger of inflicting Capital Punishments by the aid of harsh interpretations and strained analogies, and the methods which ought to be pursued in the correction of laws.

" Qui de legibus scripserunt, omnes vel tanquam philosophi, " vel tanquam jurisconsulti, argumentum illud tractaverunt. " Atque philosophi proponunt multa, dictu pulchra, sed ab usu " remota. Jurisconsulti autem, *suae* quisque *patriae legum*, " vel etiam Romanarum, aut Pontificiarum, *placitis obnoxii* " *et addicti*, judicio sincero non utuntur, sed tanquam *e vin-* " *culis sermocinantur*. Certe cognitio *ista ad viros civiles* " *proprie spectat; qui optime norunt, quid ferat societas hu-* " *mana, quid salus populi, quid aequitas naturalis, quid gen-* " *tium mores, quid rerum publicarum formae diversae: ide-* " *oque possint de legibus, ex principiis et praeceptis, tam* " *aequitatis naturalis, quam politices, decernere.*"

I will produce a few of the aphorisms which follow.

" Durum est, torquere leges, ad hoc, ut torqueant homines. " Non placet igitur extendi leges poenales, multo minus capi- " tales, ad delicta nova." (Aph. 13.)

" Statuta, quae manifesto temporis leges fuere, atque ex " occasionibus reipublicae tunc invalescentibus natae; mutata ra- " tione temporum, satis habent, si se in propriis casibus sus- " tinere possint: praeposterum autem esset, si ad casus omissos " ullo modo traherentur." (Aph. 15.)

Earl Grey, Lord Grenville, Lord Auckland, Lord Holland, Mr. Whitbread, Mr. Windham, the Honourable Mr. Ward,

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" Consequentiae non est consequentia; sed sisti debet ex-
" tensio intra casus proximos: alioqui *labitur paulatim* ad dis-
" similia, et magis valebunt acumina ingeniorum, quam auctori-
" tates legum." (Aph. 16.)

" At vetustiora exempla caute et cum delectu recipienda:
" Decursus siquidem aetatis multa mutat, ut quod tempore vi-
" deatur antiquum, id perturbatione et inconformitate ad prae-
" sentia, sit plane novum." (Aph. 24.)

In curiis praetoriis et censoriis.

" Habento curiae censoriae jurisdictionem et potestatem,
" non tantum nova delicta puniendi, sed etiam poenas a legibus
" constitutas pro delictis veteribus augendi, si casus fuerint odiosi
" et enormes, modo non sint capitales." (Aph. 34.)

" Rubricae *sanguinis* ne sunto; nec de capitalibus, in qui-
" buscunque curiis, nisi ex lege nota et certa, pronunciato. In-
" dixit mortem Deus ipse prius: postea inflixit. Nec vita eripi-
" enda nisi ei, qui se in suam vitam peccare prius nosset."
(Aph. 39.)

" Dicit Propheta; *pluet super eos laqueos.* Non sunt au-
" tem pejores laqueci, quam laqueci legum, praesertim poenalium;
" si numero immensae et temporis decursu inutiles, non lucer-
" nam pedibus praebeant, sed retia potius objiciant." (Aph.
53.)

" Duplex in usum venit statuti novi condendi ratio. Al-
" tera, statuta priora circa idem subjectum confirmat et roborat;
" dein nonnulla addit aut mutat. Altera abrogat et delet cuncta,
" quae ante ordinata sunt, et de integro legem novam et uni-
" formem substituit. Placet posterior ratio. Nam ex priore
" ratione, ordinationes deveniunt complicatae et perplexae: et
" quod instat agitur sane, sed corpus legum interim redditur

of three Judges whom I forbear to name, of Sir Arthur Pigot, Sir Samuel Romilly, Sir James Mackintosh, Mr. Serjeant

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" vitiosum. In posteriore autem major certe est adhibenda di-
" ligentia, dum de lege ipsa deliberatur; et anteacta scilicet
" evolvenda et pensitanda, antequam lex feratur: Sed optime
" procedit per hoc legum concordia in futurum." (Aph. 54.)

" Erat in more apud Athenienses, ut contraria legum ca-
" pita (quae antinomias vocant) quotannis a sex viris examinar-
" entur, et quae reconciliari non poterant, proponerentur populo,
" ut de illis certum aliquid statueretur. Ad quorum exemplum
" ii, qui potestatem in singulis politiis legum condendarum ha-
" bent, per triennium aut quinquennium, aut prout videbitur,
" antinomias retractanto. Eae autem a viris ad hoc delegatis,
" prius inspiciantur et praeparentur, et demum comitiis exhibe-
" antur; ut quod placuerit per suffragia stabiliatur et figatur."
(Aph. 55.)

" Neque vero contraria legum capita reconciliandi et omnia
" (ut loquuntur) salvandi, per distinctiones subtiles et quaesitas,
" nimis sedula aut anxia cura esto. Ingenii enim haec tela est:
" Atque utcunque modestiam quandam et reverentiam prae se
" ferat, inter noxia tamen censenda est; utpote quae reddat
" corpus universum legum varium et male consutum. Melius
" est prorsus ut succumbant deteriora, et meliora stent sola."
(Aph. 56.)

" Obsoletae leges et quae abierunt in desuetudinem, non
" minus quam antinomiae proponantur a delegatis ex officio tol-
" lendae." (Aph. 57.)

" Consultum fuerit in novo digesto legum, vetera volumina
" non prorsus deleri et in oblivionem cedere, sed in bibliothecis
" saltem manere; licet usus eorum vulgaris et promiscuus pro-
" hibeatur. Etenim in causis gravioribus, non abs re fuerit,
" legum praeteritarum mutationes, et series consulere et inspicere;
" ac certe solenne est, antiquitatem praesentibus aspergere.
" Novum autem hujusmodi corpus legum ab iis, qui in politiis
" singulis habent potestatem legislatoriam, prorsus confirmandum

Lens, Mr. Robert Smith, Dr. Colquhoun, Mr. Francis Hargrave, and, above all, Jeremiah Bentham *.

" est: ne forte praetextu veteres leges digerendi, leges novae " imponantur occulto." (Aph. 63.)

" *Optandum esset, ut hujusmodi legum instauratio illis* " *temporibus suscipiatur, quae antiquioribus, quorum acta et* " *opera retractant, literis et rerum cognitione praestiterint.* " Quod secus in opere Justiniani evenit." (Aph. 64.)

Few enlightened men in this country would assent to Bacon's opinions, as they are stated in Aphorisms twenty and forty-one. The " Curiæ prætoriæ et censoriæ" happily for Englishmen no longer exist. But the principles and the spirit to which I object, may have silently found their way to other places; and in the act of legislation even their latent, indirect, and partial operation would be dangerous.

What Bishop Warburton says upon some academical regulations injudiciously proposed, and ineffectually attempted by the Duke of Newcastle, may be applied to other and weightier subjects. " Though a multiplication of good laws do nothing " against a general corruption of manners, yet the abrogation of " *bad* ones greatly promotes reformation." (See Letter 32 of the Correspondence between Hurd and Warburton.)

" Nolumus leges Angliæ mutari," though converted into a vague generality in the writings of zealots, and the speeches of declaimers, was in reality the declaration of the lay Barons upon a *particular* occasion—" when the Prelates in the Par- " liament of Merton endeavoured to procure an act to alter " the common law, and to substitute the canon and civil law in " its stead." (See Dagge, vol. i. p. 251.)

" The Bishops," says Warburton, " as partizans of the " Pope, were for subjecting England to the Imperial and Pa- " pal laws, and therefore began with a circumstance most to the " taste of the Barons, to legitimate bastards as to succession. " The Barons smelt the contrivance, and rejected a proposition " most agreeable to them, for fear of the consequences, the

" In the multitude of such counsellors" there would have been " substantial WISDOM."

" introduction of the Imperial law, whose very genius and es-
" sence was arbitrary and despotic power. Their answer shows
" it. 'Nolumus leges Angliæ mutari.' They had nothing to
" object to the reform, but they were afraid for the *constitu-*
" *tion.*" (Letter 84.) The memorable answer of the Barons may supply specious and high-sounding terms, not appropriate and solid principles, for the vindication of those persons who object to the reform of our Penal Code. The maxim itself may be introduced upon every proposal for the repeal of laws, and if admitted indiscriminately, it would prevent *every* change however salutary. But in point of fact laws are frequently changed, and the maxim in its popular but just application is confined to encroachments upon the fundamental principles of those rights which are secured to the people by the constitution. The spirit of the words is just the same now, as it was in the Parliament of Merton. They cannot even rhetorically be urged against large and important alterations in our Penal system, unless it be shown that the general evil likely to result from such alterations exceeds the general good.

Note, after the name of *Jeremiah Bentham,* page 523, line 2.

* I have been asked, why, after pointing out by name the persons who seemed to me most qualified for reforming our Penal Code, I declined mentioning such ecclesiastics as might with propriety be employed in preparing for the use of churches a grave and impressive discourse on the authority of human laws; and as other men may ask the same question which my friend did, I have determined, after some deliberation, to insert the substance of my answer in this place.

If the public service of our church should ever be directly employed in giving effect to the sanctions of our Penal Code, the office of drawing up such a discourse as I have ventured to recommend, would, I suppose, be assigned to more than one

" O! Love the light of wisdom, all ye that be rulers " of the people, for she is the brightness of the everlasting

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person. My ecclesiastical superiors will, I am sure, make a wise choice. But they will hardly condemn me for saying, that the best sense expressed in the best language, may be expected from the Bishops of Landaff, Lincoln, St. Davids, Cloyne, and Norwich, the Dean of Christ Church, and the President of Magdalen College, Oxford. I mean not to throw the slightest reproach upon other dignitaries whom I have not mentioned. But I should imagine that few of my enlightened contemporaries hold an opinion different from my own upon the masculine understanding of a Watson, the sound judgment of a Tomlin, the extensive erudition of a Burgess, the exquisite taste and good-nature of a Bennet, the calm and enlightened benevolence of a Bathurst, the various and valuable attainments of a Cyril Jackson, or the learning, wisdom, integrity, and piety of a Martin Routh.

I have stated, unreservedly and dispassionately, my objections to the exclusive employment of lawyers in the reform of our Penal Code. But let it be observed, that with all my respect for the learning, and all my confidence in the virtues of ecclesiastics, I should be sorry to see *them* take any share in the important task. Some of them might misapply their well-founded notions of morality to a science, which, though it ought never to lose sight of moral obligation, directly and professedly aims at its own peculiar ends by its own peculiar views of public utility. Others, from the habits of studious and retired life, may have met with scanty opportunities for observing the gradations of crimes, and the effects of human penalties affixed to them. A few, (I hope a very few) might be too much inclined to severity, from the frequency of insisting upon future rewards and punishments in situations where such topics are salutary and proper, from their reference to the will of an *unerring* Judge, or I should rather say, to his laws, as the expression of that will, and to the sanctions of those laws, in happiness as a motive to obedience, and in misery as a restraint from disobedience—but a motive, be it remembered, which human legis-

" light, the undefiled mirror of the majesty of God, and " the image of his GOODNESS*."

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lators seldom can employ at all, and a restraint which they sometimes do employ inconsiderately or vindictively, with too little of good effect, or too much of evil. All of them might lose a part of the reverence which is now paid to their office, if they were merely suspected of acting in contradiction to the *principle* of that decorous and humane usage which now restrains Bishops as Peers of Parliament from the exercise of a dubious right to pass sentence in cases of blood, where the contingent praise which they might acquire by lenity in acquittal, is not considered as an equivalent for the contingent blame which they might incur, by seeming rigour in condemnation. To all imperfect and responsible beings, mercy is, perhaps, the most interesting attribute of the Deity. Mercy is the distinguishing characteristic of Christianity. Mercy is the fairest badge of a Christian priesthood.

* See Wisdom, chap. 6 and 7.

" *Good Kings*," page 203, line 6 from the bottom.

You will read with satisfaction the character drawn by Silius Italicus, of a good King, who is said by Polybius " πλεῖστον χρόνον ἀπολελαυκέναι τῆς ἰδίας ἐυβουλίας,"

" His longo mitis placide Dominator in Ævo
" Præfuerat Terris Hieron, tractare sereno
" Imperio vulgum pollens, et pectora nullo
" Parentum exagitare Metu; pactamque per Aras
" Hand facilis temerare Fidem, socialia jura
" Ausoniis multus servarat casta per Annos*."

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* Lib. xiv. lin. 79.

In the verses which follow you may see the crimes and the punishment of Hiero's grandson and successor. Let me add, that the odious cruelties inflicted upon unoffending and amiable females in a neighbouring country will make you read with stronger sensibility the following passage:

" Nec jam Modus Ensibus: addunt
" Fœmineam Cœdem, atque insontum rapta Sororum
" Corpora prosternunt Ferro. *Nova* sævit in armis.
" Libertas, jactatque jugum *."

" *Violated,*" page 205, line 6 from the bottom.

The προφήτης who addressed Alexander, instead of saying ὦ παιδίον, pronounced ὦ παιδίος, and this intentional blunder produced an equivoque not unpleasing to the ear of him who wished to be considered as the son of Jove †."

" *Cast down his head,*" page 205, line 4 from the bottom.

" Oculos habuit claros ac nitidos: quibus etiam ex-
" istimari volebat inesse quiddam divini vigoris: gande-
" batque si sibi quis acrius contuenti, quasi ad fulgorem
" solis, vultum submitteret ‡."

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* Lib. xiv. lin. 105. Vid. Liv. lib. xxiv. par. 26.

† Vid. Plutarch. vol. i. p. 680. edit. Xyland. ‡ Vid. Suet. in Vit. August. sect. 79.

"*Gibberish*," page 206, line 2.

"Murmur-mur-mur Gnaden mur-mur*." Does not this anecdote bring to your memory the "verba obscura, "suspensa, perplexa, eluctantia, in speciem composita" of Tiberius†?

"*The Sun*," page 206, line 15.

See what is told of Diogenes in his interview with Alexander, by Plutarch‡.

"*Triflers*," page 207, line 8 from the bottom.

You are well acquainted with these triflers, and perhaps you will not think them ill described by Ovid:

"Nulla quies intus, nullaque silentia parte.
"Nec tamen est clamor, *sed parvae murmura vocis*,
"Qualia de pelagi, si quis procul audiat, undis
"Esse solent.
"Atria turba tenent; veniunt leve vulgus euntque.
"Mistaque cum veris passim commenta vagantur
"Millia rumorum: confusaque verba volutant.
"E quibus, hi vacuas implent sermonibus aures:
"Hi narrata ferunt alio; mensuraque facti
"Crescit; et *auditis aliquid novus adjicit auctor*§."

* Vid. Gesner's Isagoge, vol. ii. p. 563. † Vid. Tacit. Hist. iv. par. 31. ‡ Vol. i. p. 671.
§ Vid. Ovid. Metamorph. lib. 12.

" *Plain dealing*," page 211, line 1.

Of this virtue we have a striking instance in the negociations between De Wit and Sir William Temple, when they formed the triple alliance. But history abounds with contrary examples. The plain in which Pope Gregory carried on his perfidious negociation with Louis the Debonnair, " is called to this day," says Voltaire, " the *field* " *of lies;* a name which might very properly be applied " to many other places where negociations have been car- " ried on*."

" *Utility*," page 213, line 21.

I enter not into the general question upon utility, but shall content myself for the present with expressing my assent to Cicero: " Dubitandum non est quin *nunquam* " possit utilitas cum honestate contendere. Itaque acce- " pimus Socratem exsecrari solitum eos qui primum hæc " naturâ cohærentia, opinione distraxissent. Cui quidem " ita sunt Stoici assensi, ut quicquid honestum esset, id " utile esse censerent; nec utile quidquam, quod non ho- " nestum †."

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* Vid. Essay on the Manners and Spirit of Nations, vol. ii. cap. 23.

† De Officils, lib. iii. par. 3.

"*Tempered by Justice*," page 216, line 4 from the bottom.

We may describe Mr. Fox as Plutarch has described Marcellus:

"Βέβαιον ἄνδρα καὶ τὴν ἀλήθειαν ἀρχὴν μεγάλης ἀρετῆς
"καὶὰ Πίνδαρον ἡγούμενον*."

The words of Pindar might have been applied by Mr. Fox to his own political engagements:

"Αρχὰ μεγάλας ἀρετᾶς ἄναξς Αλάθεια,
"μὴ Πταίοις ἐμὰν σύνθεσιν τραχεῖ
"Ποτὶ ψεύδει †."

In his public conduct he was superior to Aristides, *if* credit be due to Theophrastus, who after commending the conduct of *the Just* Athenian in private life, and towards his fellow-citizens, accuses him,

"ἐν τοῖς κοινοῖς πολλὰ πρᾶξαι πρὸς τὴν ὑπόθεσιν τῆς πα-
"τρίδος ὡς συχνῆς ἀδικίας δεομένην ‡."

Bayle, who quotes this passage, is fair enough to refer his readers to the more favourable account which Cicero gives of Aristides, in lib. iii. de Officiis. There is, however, too much truth in what Bayle has said concerning the religion of a sovereign, in note H on the article Agesilaus the second.

"*Those relations prescribe*," page 217, line 11.

In Lactantius de vero Cultu §, we have some verses of Lucilius, which present to us the properties of virtue in a summary view. Patriotism, of course, is not omitted.

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* In vit. Marii. † See Pindar. Fragm. by Schneider, p. 99.
‡ Vid. Plutarch. in vit. Aristid. § Lib. vi. par 5m

"Commoda præterea Patriæ sibi prima putare." This virtue Mr. Fox practised, and in such a manner, too, as not to have incurred the serious and just complaint of Lactantius against the excesses and abuses of Patriotism. His words ought to be engraven deeply upon the memories and the hearts of all statesmen. "Sublata Hominum Concordia, Virtus nihil est omnino. Quæ sunt enim Patriæ Commoda, nisi alterius Civitatis aut Gentis Incommoda? Id est Fines propagare, aliis violenter ejectis? augere Imperium; Vectigalia facere majora. Quæ omnia non utique Virtutes, sed Virtutum sunt Eversiones. In primis enim tollitur humanæ Societatis Conjunctio, tollitur Innocentia, tollitur alieni Abstinentia; tollitur denique ipsa Justitia, quæ Dissidium Generis humani ferre non potest; et ubicunque Arma fulserint, hinc eam fugari et exterminari necesse est. Verum est enim Ciceronis illud: *Qui autem Civium Rationem dicunt habendam, externorum negant; dirimunt hi communem Generis humani Societatem: qua sublata, Beneficentia, Liberalitas, Bonitas, Justitia funditus tollitur* *."

"*Mixed governments*," page 217, line 14.

Political writers very properly apply to the English government a well-known passage in Tacitus: "Cunctas nationes et urbes populus, aut primores, aut singuli regunt: delecta ex his et constituta reipublicae forma, laudari facilius quam evenire, vel, si evenit, haud diuturna esse potest †;" they refer, also, to a fragment which Nonius on the word *modium* has preserved from the writings of Cicero: "Statuo esse optimè constitutam rempublicam quæ ex tribus generibus illis, regali, optimo, et populari

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* Edit. Sparke, p. 520. † Annal. lib. 4.

"confusa modice, &c." Blackstone, who justly considers the British constitution as a standing exception to the truth of the observation made by Tacitus, does not seem to have been aware that the notion of a mixed form of government was to be found in any other writers of antiquity than the two whose words are above quoted. But it may be of some importance for us to remember that Polybius has enlarged upon the subject at the opening of the sixth book Megal. Histor. He expressly states that constitution of a commonwealth to be the best, which is composed of the regal, the aristocratic, and the popular form, and he at large illustrates his position by an examination of the Spartan and the Roman governments, which in his opinion partook of each form. Stobæus in Sermone 41 gives a long extract from Hippodamus the Pythagorean, in a work, De Republica, where he speaks of monarchy: "ἃ δεῖ κατὰ πᾶν αὐτᾷ χρέεσθαι, μέχρι δὲ τῶ "δυνάλω καὶ ποτὶ τὰν πολίτειαν χρησίμω." Of the remaining forms he speaks thus: "τὰν δ' ἀριστοκρατίαν ἐπιπλέον ἐμ- "πλέκειν, τῷ πλείονας εἶμεν τὼς ἄρχοντας, καὶ φιλοξήλως "διατιθεσθαι ποτ' ἀνίους, καὶ πολλάκις ἀντιμεταλαμβάνεσθαι "τας ἀρχάς· δαμοκρατίαν δὲ ἀναγκαῖον μὲν ἦμεν πάντως· δεῖ "γὰρ τὸν πολίταν μέρος ὑπάρχοντα τως συμπάσας πολιτείας "φέρεσθαί τι ἀπ' αὐτᾶ, γέρας· ἐπίχεσθαι δ' ἱκανως ἀνίαν "δεῖ. θρασὺ γὰρ καὶ προπετὲς τὸ πολὺ πλᾶθος." There can be no difficulty in accounting for the strong preference which a Greek writer would give to the republican as opposed to the monarchical form. But I would wish to contrast Mr. Burke's opinion with that of Hippodamus. Speaking of himself as the writer of an Appeal from the New to the Old Whigs, Mr. Burke says "He knew nothing "in his nature, temper, or faculties which should make "him an enemy to any republic modern or ancient. He "had studied the form and spirit of republics very early "in life and with great attention. He was convinced that "the science of government would be poorly cultivated "without that study. But the result in his mind from

"that investigation has been, and is, that neither England "nor France, without infinite detriment to them, as well "in the event as in the experiment, could be brought "into a republican form; but that every thing republi- "can which can be introduced with safety into either of "them, must be built upon a monarchy; built upon a "real, not a nominal monarchy, *as its essential basis;* that "all such institutions, whether aristocratick or democra- "tick, must originate from their Crown, and in all their "proceedings must refer to it: that by the energy of that "main spring alone those republican parts must be set in "action, and from thence must derive their whole legal "effect (as amongst us they actually do) or the whole will "fall into confusion *."

But let me return from Mr. Burke, to a fifth ancient writer who spoke of mixed governments, and whose words I have not seen in any modern works upon politics. In the thirty-seventh section of the Bibliotheca, Photius mentions a dialogue which passed between Mænas Patricius and Thomas Referendarius, in which the polity of Plato is censured, and opinions upon government very different from those of the old Greek writers are introduced. The article concludes in these words: "Ἣν δ' αὐτοὶ πολιτείαν "εἰσάγουσιν ἐκ τῶν τριῶν εἰδῶν τῆς πολιτείας, δέον αὐτὴν συγ- "κεῖσθαί φασι, βασιλικῆ καὶ ἀριστοκρατικῆ καὶ δημοκρατικῆ· "τὸ εἰλικρινὲς αὐτῆ ἑκάστης πολιτείας συνεισαγάσης, κἀκείνην τὴν "ὡς ἀληθῶς ἀρίστην πολιτείαν ἀποτελέσης."

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* Burke's Works, Appeal from the New to the Old Whigs, vol. vi. p. 133—4

"*Peace,*"

"*Peace*," page 218, line 12.

The treatment Mr. Fox met for some of his speeches in favour of Peace, would justify me in applying to him a part of what Milton wrote about Enoch.

"Gray-headed men and grave, with warriors mix'd,
"Assemble, and harrangues are heard, but soon
"In factious opposition, 'till at last
"Of middle age one rising, eminent
"In wise deport, spake much of right and wrong,
"Of Justice, of Religion, Truth, and Peace,
"And Judgment from above: him old and young
"Exploded *."

"*That good*," page 218, line 18.

I will quote the passage, because I have again and again read it with the most exquisite delight.

"Οἱ Φιλόσοφοι ζητῆσιν, ὡς ἀκήκοα,
"Περὶ τᾶτό δ' αὐτοὶς πολὺς ἀναλῶται χρόνος,
"Τί ἐστιν ἀγαθὸν· ὐυδὲ εἷς εἰρηκέ πω
"Τί ἐστιν. ἀρετὴν καὶ φρόνησίν φασι, καὶ
"Πλέκεσι ταῦτα, μᾶλλον, ἢ τί τ' ἀγαθόν.
"Εν ἀγρῷ διαλρίβων, τῆνδε γῆν σκάπτων ἐγὼ,
"Νὺν εὖρον—εἰρήνη 'στιν—'ὦ Ζεῦ φίλτατε
"Τῆς εὐαφροδίτε, καὶ φιλανθρώπε Θεᾶ.
"Γάμες, ἑόρτας, συγγενεῖς, παῖδας, φίλες,
"Πλᾶτον, ὑγιείαν, σῖτον, οἶνον, ἡδόνην,

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* Par. Lost, book. xi.

" Αὐτη δίδωσι—ταῦτα πάνϑ ἁν ἐκλίπῃ,
" Τέθνηκε κοινῇ πᾶς ὁ τῶν ζώντων βίος *."

" *Virtues*," page 221, line 1.

I once had the pleasure to meet Dr. Dickson, the late Bishop of Down, to the candour of whose spirit, the sanctity of whose opinions, and the innocency of whose life, Mr. Fox has done justice in a very masterly Epitaph; and if that excellent Prelate were now living to read the foregoing statement, I trust that he would not condemn me for thus addressing the shade of our common friend:

" veræ Virtutis amator,
" Unum hoc maceror, et doleo tibi deesse."

He must be a bigot, or a maniac, that would suspect impiety to lurk in the writer of the following Epitaph:

" Under this stone lie interred the mortal remains of the
" Right Rev. William Dickson, late Bishop of Down and Con-
" nor, whose memory will ever be dear to all who were con-
" nected with him in any of the various relations of life.—Of
" his public character, the love of liberty, and especially of
" religious liberty, was the prominent feature: sincere in his
" own faith, he abhorred the thought of holding out tempta-
" tions to prevarication or insincerity in others, and was a
" decided enemy, both as a bishop and a legislator, to laws
" whose tendency is to seduce or to deter men from the open
" and undisguised profession of their religious opinions by
" reward and punishment, by political advantages, or po-

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* Fragment from the Pyrrhus of Philemon, page 344, edit. Le Clerc.

" litical disabilities. In private life, singular modesty, cor-
" rect taste, a most engaging simplicity of manners, un-
" shaken constancy in friendship, a warm heart alive to all
" the charities of our nature, did not fail to conciliate to
" this excellent man the affections of all who knew him.
" But, though the exercise of the gentler virtues which
" endear and attract, was more habitual to him as most
" congenial to his nature, he was by no means deficient in
" those more energetic qualities of the mind which com-
" mand respect and admiration. When roused by unjust
" aggression, or whatever the occasion might be that called
" for exertion, his mildness did not prevent him from dis-
" playing the most manly and determined spirit; and not-
" withstanding his exquisite sensibility, he bore the severest
" of all human calamities, the loss of several deserving and
" beloved children, with exemplary fortitude and resigna-
" tion. He was born in February 1745—was married in June
" 1773, to Henrietta Symes, daughter of the Rev. Jeremiah
" Symes; was preferred to the bishopric of Down and
" Connor in December 1783, and died on the 19th of
" September 1804, deeply regretted by all the different re-
" ligious sects that composed the population of his exten-
" sive diocese; by acquaintances, neighbours, and depend-
" ants of every condition and description; by his children,
" his friends, and his country; and most of all by his dis-
" consolate widow, who has erected this stone to the me-
" mory of the kindest husband, and the best of men."

C. J. Fox *.

What man of sense would impute levity or profaneness to the mind which conceived such an inscription? Where is the enlightened and orthodox believer who, upon reading it would not exclaim, " ἐυξαίμην, ἂν τῷ θεῷ, καὶ ἐν " ὀλίγῳ, καὶ ἐν πολλῷ τοι ουτον σε γενέσθαι, ὁποῖος καγώ " ειμι ;"

* See Monthly Magazine, vol. xx. p. 574.

"*Secret things*," page 221, line 7 from the bottom.

Dr. Johnson was certainly not a latitudinarian. His masculine sense sometimes happily suspended the force of his religious prejudices. The following passage which I have selected from his character of Dr. Mudge, unites the true spirit of Christian charity with the soundest wisdom. "His principles both of thought and action "were great and comprehensive. By a solicitous exami- "nation of objections, and a judicious comparison of "opposite arguments, he attained what enquiry never gives "but to industry and perspicuity—a firm and unshaken "settlement of conviction. But his firmness was without "asperity, for *knowing with how much difficulty truth was "sometimes found*, he did not wonder that many missed "it *."

You will be glad to see in what terms men not unequal to Johnson in genius, and superior to him in learning, discourage our attempts to solve all difficulties which meet us in the natural and in the moral world, and by discouraging them, to preserve us from the extremes of dogmatism and scepticism.

"Ne curiosus quære causas omnium,
"Quæcunque libris vis prophetarum edidit,
"Afflata cœlo, plena præsenti Deo:
"Nec operta sacri supparo silentii
"Irrumpere aude: sed pudenter præteri
"Nescire velle quæ magister optimus
"Docere non vult, erudita inscitia est."

SCALIGER.

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* Boswell's Memoirs of Johnson, vol. iii. p. 333.

" Qui curiosus postulat totum suæ
" Patere menti, ferre qui non sufficit
" Mediocritatis conscientiam suæ,
" Judex iniquus, æstimator est malus
" Suique, naturæque: nam rerum parens
" Libanda tantum quæ venit mortalibus,
" Nos scire pauca, multa mirari jubet.
" Hic primus error auctor est pejoribus.
" Nam qui fateri nil potest icognitum,
" Falso necesse est placet ignorantiam,
" Umbrasque inanes captet inter nubila.
" Magis quiescet animus, errabit minus,
" Contentus eruditione parabili,
" Nec quæret illam, siqua quærentem fugit.
" Nescire quædam magna pars sapientiæ est *."

" *Imitated*," page 224, line 14.

If Mr. Fox had been asked to what school of eloquence he belonged, he perhaps would have replied in the spirit of an antient speaker who, " percontanti, Theodo-
" reus, an Apollodoreus esset, respondit, ego Parmularius
" sum †."

" *Premeditated speeches*," page 226, line 19.

I could wish the merit of Mr. Fox's method to be tried by the opinions of Mr. Hume. " There is a great prejudice

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* Grotii Epigram. lib. i. † Vid. Quintilian, lib. ii. cap. 12.

"against set speeches, and a man can scarce escape ridicule "who repeats a discourse as a school-boy his lesson, and "takes no notice of any thing which has been advanced "in the course of the debate. But where is the necessity "of falling into this absurdity? A public speaker must "know beforehand the question under debate. He may "compose all the arguments, objections, and answers, such "as he thinks will be most proper for his discourse. If "any thing new occur, he may supply it from his inven-"tion; nor will the difference be very apparent between "his elaborate and extemporary compositions. The mind "naturally continues with the same impetus or force "which it has acquired by its motion; as a vessel once "impelled by the oars, carries on its course for some time, "when the original impulse is suspended."

"The great affectation in our modern orators, of ex-"temporary discourses, has made them reject all order "and method, which seems so requisite to argument, and "without which 'tis scarce possible to produce an entire "conviction on the mind. 'Tis not that one would re-"commend many formal divisions in a public discourse, "unless the subject very evidently offer them: But 'tis "easy without this formality, to observe a method, and "make that method conspicuous to the hearers, who will "be infinitely pleased to see the arguments rise naturally "from one another, and will retain a more thorough per-"suasion than can arise from the strongest reasons which "are thrown together in confusion *."

These just observations deserve attention from every public speaker, and from every critic on public speaking. It may be worth while to remark that in describing the little apparent difference between the elaborate compositions and the extemporaneous speeches of an orator, Mr. Hume has unconsciously employed the same beautiful imagery which we meet in Cicero, when he contrasts the sudden effusions

* Hume's Essay on Eloquence, vol. i.

of a public speaker with matter prepared in writing. "Si quando in dicendo scriptum attulerit aliquid, cum ab "eo discesserit, reliqua similis oratio consequetur: ut con- "citato navigio, cum remiges inhibuerunt (lege, sustinue- "runt *) retinet tamen ipsa navis motum et cursum suum, "intermisso impetu pulsuque remorum: sic in oratione "perpetuâ, cum scripta deficiunt, parem tamen obtinet "oratio reliqua cursum scriptorum similitudine et vi con- "citatâ †."

Another instance of unconscious similitude between an ancient and a modern writer occurs at the moment to my memory, and as I have not seen it noticed in any book you will excuse me for producing it. "Gray," says John- son, "in his odes has a kind of strutting dignity, and is "*tall by walking on tiptoe.*" We meet with a similar thought in Quintilian: "Prima est eloquentiæ virtus, perspicuitas: "et quo quisque ingenio minus valet, hoc se magis attollere "et dilatare conatur: ut *staturâ brevis in digitos eriguntur*, "et plura infirmi minantur ‡."

I will add a third instance. Johnson said of Lord Chesterfield, "He is a wit among lords, and a lord among "wits." But he remembered not that Pope had written

"A wit with dunces, and a dunce with wits §."

Neither of them, perhaps, was conscious, that Quintilian had long ago said, "Qui stultis eruditi videri volunt, eru- "ditis stulti videntur ||."

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* Epist. ad Attic. lib. xiii. vol. 2.

† De Oratore, lib. i. par. 33.

‡ Quintil. lib. ii. cap. 3.

§ Dunciad, book iv. line 90.

|| Quintil. lib. x. cap. 7.

"*Series of divisions,*"

" *Series of divisions*," page 227, line 17.

It may amuse you if I were to divide between Mr. Fox and his great rival most of the properties which Cicero, in what he calls *quasi sylvam*, requires from an orator. The first of them, " sic dicet, ut verset sæpe multis " modis eandem et unam rem, et hæreat in eâdem commore- " turque sententia; ut sæpe cum iis qui audiunt, nonnun- " quam etiam cum adversario, quasi deliberet; ut hominum " sermones, moresque describat; ut ante occupet, quod videat " opponi; ut comparet similitudines; ut utatur exemplis; ut " liberius quid audeat; ut irascatur etiam; ut objurget ali- " quando; ut deprecetur; ut supplicet; ut medeatur; ut a " proposito declinet aliquantulum; ut optet; ut exsecretur; ut " fiat iis apud quos dicit, familiaris; atque alias etiam dicendi " virtutes sequatur; brevitatem, si res petat. Sæpe etiam " rem dicendo subjiciet oculis." The other " sic dicet, " sæpe ut irrideat; ut declinet a proposito, deflectatque " sententiam; ut proponat quid dicturus sit; ut *contra, ac* " *dicat accipi et sentiri velit;* ut dividat in partes; ut aliquid " relinquat; ut ab eo quod agitur avertat animos; ut ante " præmuniat; ut in eo ipso in quo reprehenditur, culpam " in adversarium conferat; ut interpellatorem coerceat; " ut aliquid reticere se dicat; ut denuntiet, quid caveant. " Sæpe supra feret, quam fieri possit. Significatio sæpe " erit major, quam oratio. Hoc in genere omnis ejus elucet " eloquentiæ magnitudo. Hæc collocata, et quasi structa " et nexa verbis, ad eam laudem, quæ orationis propria " est, aspirant*."

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* Cicero, Orator, vol. i. page 162. Ed. Gruter.

" *Sharpness*

"*Sharpness of his invectives*," page 229, five lines from the bottom.

"Hæc Simulatio interim huc usque processit, ut, quæ "refutare non posset, quasi fastidiendo calcaret*."

"*Terms*," page 231, line 5.

"Zeno quoque Stoicorum Princeps, non tam rerum "inventor fuit, quam novorum verborum †."

"*Contrary notions*," page 232, line 7.

Within these late years we have heard much in our Parliamentary debates of existing circumstances, when employed to justify seeming or real deviations from general principles. I shall not here repeat the critical objections which you have heard me make to the use of the phrase. But you have yourself often lamented the effects of it upon the judgments, or at least in the votes of persons who are in Parliament, and you will not be sorry to read the exposition which a very learned and intelligent Critic has given of the principle that is wrapped up in our modern phrase.

"Prudentiam philosophi politici duplicem faciunt: "eam quæ simpliciter prudentia vocatur, et quam ipsi di-

* Quintil. lib. v. cap. 3. † Cicero de finibus, lib. iii. par. 2.

" cunt περιστατικὴν, velut temporum necessitate expres-
" sam. Simili ratione dicuntur Senecæ epistola LXVI.
" *Quædam prima bona; tanquam gaudium, pax, salus patriæ;*
" *quædam secunda in materia infelici expressa; tanquam tor-*
" *mentorum patientia, et in morbo gravi temperantia.* Ex
" hac diversitate, genus duplex officiorum viri prudentis
" nascitur: officia prima, sive primario suscepta, in quibus
" emicat ipsa honestas, nulla inhonesti suspicione aut mix-
" tione obscurata: ut quum dives aliquis patriæ aut egenis
" opes suas impendit: quum vir fortis contra patriæ per-
" duelles stat fortiter in acie: item officia περιστατικὰ,
" quæ M. Tullius OFFICIA EX TEMPORE vertendo nominat,
" et SECUNDA HONESTA; quum honestati quam sequeris
" inest aliquid quod plerunque turpe videatur. Sæpe
" enim tempore fit, ut quod plerunque turpe haberi so-
" leat, inveniatur non esse turpe. Hujus autem generis
" officiorum ex tempore, cum in privata vita interdum
" est usus, ut disputant iidem philosophi: tum multo
" magis in publicæ rei administratione. tanti enim est
" publica salus, ut sapientissimi olim viri dicere ac do-
" cere veriti non sint; non esse quidem honesto unquam
" utile anteponendum: sed statui ita debere; quicquid valde
" necessarium sit Reip. id fieri honestum, etiam si ante non
" videretur. Verum heic cautione et attentione magna Po-
" liticis est opus: ne prudentiam περιστατικὴν, cui hu-
" manum genus sua miseria et vanitas fecit obnoxium, ut
" recte sentit B. Augustinus, in dolum malum convertant,
" et illam veteratorium malitiam, quam vir optimus Poly-
" bius κακοπρογμοσύνην vocat, et tantopere abominatur.
" Hodierni politici secunda officia quæ περιστατικὰ vocari
" diximus a Græcis, nominant *Rationem status*. qui autem
" dolos et fraudes nefarias hoc specioso mantelio hodie ob-
" nubunt, ii non pro viris prudentibus, sed pro malitiosis
" veteratoribus sunt habendi *."

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* Vid. Casaubon's Commentary in Polybium, lib. iii. p. 141.

" *Topic of boasting*," page 237, line 17.

From the love I bear to my country, and from my remembrance of the important and honourable part it once sustained in the politics of Europe, I have often wished such measures to have been pursued during the late and the present war, as would have justified me in continuing to apply to England a beautiful passage which I have been accustomed to repeat with enthusiastic fondness:

" Ὁ τὴν Ῥώμην ὑποβαλόμενος χρόνος μετὰ θεοῦ τύχην καὶ " ἀρετὴν ἐκέρασε καὶ συνέζευξεν, ἵνα ἑκατέρας λαβὼν τὸ οἰκεῖον, " ἀπεργάσηται πᾶσιν ἀνθρώποις ἑστίαν ἱερὰν, ὡς ἀληθῶς, καὶ " ὀνησιθώραν, καὶ πεῖσμα μόνιμον, καὶ στοιχεῖον ἀΐδιον, ὑποφερομέ- " νοις τοῖς πράγμασιν ἀγκυρηβόλιον σάλπ καὶ πλάνης, ὥς φησι " Δημόκριτος *."

" *I marvel not*," page 238, line 4 from the bottom.

From present appearances in the political horizon the day I trust is approaching when the downfal of one who has hitherto supposed " summa scelera incipi cum periculo, " peragi cum præmio †," will remove the doubts which Tacitus expressed upon the interview between Trasullus and Tiberius. " Mihi hæc ac talia audienti in incerto judicium " est, fatone res mortalium et necessitate, an forte volvan- " tur: quippe sapientissimos veterum, quique secta eorum

* Vid. Plutarch. de fortuna Romanorum, lib. ii. p. 316—17.

† Annal. lib. xii. par. 12.

" æmulantur, diversos reperies. Ideo creberrima et tristia
" in bonos, læta apud deteriores esse. Contra alii fatum
" quidem congruere rebus putant, sed non e vagis stellis,
" verum apud principia et nexus naturalium causarum;
" ac tamen electionem vitæ nobis relinquunt, quam ubi
" elegeris, certum imminentium ordinem. Neque mala vel
" bona quæ vulgus putant; multos qui conflictari adversis
" videantur beatos, ac plerosque quanquam magnas per
" opes miserrimos: si illi gravem fortunam constanter to-
" lerent, hi prosperâ inconsulte utantur *."

The fall of such a conqueror may reconcile many persons to the belief of a providence administered by secondary causes, and induce them to take a lively interest in the language of Claudian whose statement of principles and whose conclusion from facts may be properly contrasted with the passage I have just now quoted from Tacitus.

" Sæpe mihi dubiam traxit sententia mentem
" Curarent Superi terras, an nullus inesset
" Rector, et incerto fluerent mortalia casu.
" Nam cum dispositi quæsissem fœdera mundi
" Præscriptosque mari fines, tunc omnia rebar
" Consilio firmata Dei. * * *
* * * * * * *
* * * * * * *
" Sed cum res hominum tantâ caligine volvi
" Aspicerem, lætosque diu florere nocentes,
" Vexarique pios: rursus labefacta cadebat
" Religio, causæque viam non sponte sequebar
" Alterius, vacuo quæ currere semina motu
" Affirmat, magnumque novas per inane figuras
" Fortunâ, non arte regi: quæ numina sensu

* Tacit. Annal. lib. vi. par. 5.

" Ambiguo vel nulla putat, vel nescia nostrî.
" Abstulit hunc tandem Rufini pœna tumultum,
" Absolvitque Deos: jam non ad culmina rerum
" Injustos crevisse queror: tolluntur in altum
" Ut lapsu graviore ruant*."

" *Title*," page 240, line 3 from the bottom.

This offensive pamphlet has been republished by Mr. Burke himself, but with a milder and more judicious title than it bore, when it was first sent into the world by the impatience and anger of the printer. The insertion of it in the works of that celebrated man must give perpetuity and increased notoriety to the censures contained in it; and therefore calls aloud for public and pointed notice from the well-wishers of Mr. Fox. *Spreta exolescunt convitia* was a maxim which our friend generally followed under very trying provocations. But the mischievous insinuations, the weighty charges, the bitter reproaches aimed against Mr. Fox himself, against Mr. Adair, and Lord Howick, who were his personal friends, and against other excellent men who adhered to his party, made, as I know from my correspondence with him, a very deep and a very painful impression upon his mind. In the writings of Mr. Burke posterity will find the name of Mr. Fox recorded, as of a man who had rushed upon the very threshold of treason, who approved of nearly all the atrocities which disgraced the French revolution, and who not only held, but avowed, principles, which, if he should ever have been admitted to power, would have endangered the property of every English gentleman, and might have changed the whole form of the English government. In

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* Claudian. in Rufin. lib. i.

the second edition no one accusation is omitted, no one reproach is softened, no one prediction of the dreadful consequences which were to ensue from an administration over which Mr. Fox presided, is directly or indirectly qualified. The alterations, as I find upon careful comparison, are few, and merely verbal.

Mr. Burke has prefixed a very elaborate and animated dedication of his work to the Duke of Portland; and in the course of it he tells us "that his own latest judgment "owns his first sentiments and reasonings in their full "force with regard to persons and things." He represents "Lord Lauderdale as acting in the spirit of Lord George "Gordon." He says that "Mr. Coke of Norfolk had en- "gaged his share of the aristocratic interest in the new "cause of a new species of democracy, which was openly "attacking or secretly undermining the system of property "by which mankind have hitherto been governed." The introduction of such new matter, and the republication of the former charges against Mr. Fox and his party, are decisive proofs of a most fixed and hostile purpose in the accuser.

Surely no reasonable admirer of Mr. Burke will condemn me for calling the contents of such a pamphlet "μίαρα καὶ ἀπίθανα ῥήματα *."

"*It appeared in* 1796," page 241, line 7.

Mr. Burke in his Appeal to the Old Whigs declares that he never "did impute to Mr. Fox any republican prin- "ciples, or any other bad principles or bad conduct what- "soever—that Mr. Fox cannot admire the change of one

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* Vid. Æschin. de Corona.

" piece of barbarism in France for another and a worse—
" that his mind was made to better things"—so writes Mr. Burke in 1791. How great was the change wrought in his sentiments when he spoke of the same man in 1793!

" *Constitutional principles*," page 256, line 15.

The specific charge brought by Mr. Burke against Mr. Adair was, that with guilt little short of treason, he had been an accomplice with Mr. Fox in opposing the measures of an accredited ambassador at the court of Petersburgh. The specific duties in which Mr. Adair has been engaged for nearly three years, are those of an Envoy at the Courts of Vienna and Constantinople. He in all probability was commissioned to go to Constantinople, because his Sovereign approved his conduct at Vienna; and I have not credulity enough to suppose that the English government would have employed the betrayer of his country in trusts so important, at a juncture so perilous. The confidence of the Sovereign completely and visibly refutes the accusations of Mr. Burke. The lot of Mr. Adair is indeed singular, and at the same time highly creditable to his abilities and his honour. He remained at one court, and has since been sent to another, with the approbation of a ministry whose general system he would have opposed in Parliament. He retained the first employment, and accepted the second, without forfeiting the good opinion of the party with which he has long acted, and probably would act again, at home. Surely these unusual circumstances justify the large confidence which I *know* Mr. Fox to have reposed in the good-sense and fidelity of our common friend Mr. Adair.

" *Annual Register*,"

"*Annual Register*," page 261, line 16.

This charge ought to be supported by direct and even ample quotations from the work itself.

In chapter the seventh of the Annual Register for 1788, nearly eight pages are employed upon the admirable speech which Mr. Burke delivered on the opening of the charge against Mr. Hastings. "The curiosity excited by "Mr. Sheridan's speech upon the same occasion, and the "attention paid to it by Sir Joshua Reynolds, by Mr. Gib- "bon, by other literary characters, and by the whole "audience, must be within our recollection." We must therefore be surprised a little, that the writer who had done justice, but no more to Mr. Burke, should be content with speaking of Mr. Sheridan in the following words: "On "the thirty-second day of the trial (Tuesday, June the "third) Mr. Sheridan began to sum up the evidence, and "to apply it in proof of the charge. His speech, which "was delivered to an uncommonly crowded audience, was "continued the two following days*."

With this statement let us contrast the representation which the same annalist has given of Mr. Sheridan's speech upon the Begums of Oude, in the Annual Register of 1787.

"The subject of this charge was peculiarly fitted for "displaying all the pathetic powers of eloquence; and "never were they displayed with greater skill, force, and "elegance than upon this occasion. For five hours and "an half Mr. Sheridan kept the attention of the house "(which from the expectation of the day was uncommonly "crowded) fascinated by his eloquence; and when he sat "down, the whole house, the members, peers, and stran- "gers, involuntarily joined in a tumult of applause, new

* Page 169.

" and irregular in that house, by loudly and repeatedly " clapping with their hands. Mr. Burke declared it to be " the most astonishing effort of eloquence, argument, and " wit united, of which there is any record or tradition. " Mr. Fox said, ' All that he had ever heard—all that he " ' had ever read, dwindled into nothing, and vanished like " ' vapour before the sun.' Mr. Pitt acknowledged, that it " surpassed all the eloquence of antient or modern times, " and possessed every thing that genius or art could fur- " nish, to agitate and control the human mind *."

It is of importance for us not to forget, that the same writer who had been thus liberal of praise to one speech of Mr. Sheridan, was afterwards, in the same work, and upon the same subject, so thrifty of it to another. The fact is very striking indeed; and if that writer *was* the person whom the public for many years supposed him to be, we can hardly forbear to suspect that jealousy of Mr. Sheridan's growing reputation preceded and *produced* the difference. In the *progress* of that jealousy, such a critic upon Mr. Sheridan would not have been very angry with Mr. Burke for speaking of Mr. Fox as one, who " by long " practice and slow degrees had risen to be a most brilliant " and accomplished debater."

The fidelity of the Annalist in *one* quarter did not desert him, when he *minutely* detailed what Mr. Fox said in praise of Mr. Burke, after their first and mildest altercation in Parliament upon the French Revolution.

" As soon as Mr. Burke, whose speech was received " with great and general applause, sat down, Mr. Fox rose, " and said, that his right honourable friend had mixed " his remarks upon what he had said, with so much per- " sonal kindness towards him, that he felt himself under " a difficulty in making any return, lest the House should " doubt his sincerity, and consider what he might say as " a mere discharge of a debt of compliments. He must

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* Vid. page 150.

" however declare, that such was his sense of the judgment " of his right honourable friend, and such the estimation " in which he held his friendship, that if he were to put " *all the political information which he had learnt from books,* " *all which he had gained from science, and all which any* " *knowledge of the world and its affairs had taught him, into* " *one scale, and the improvement which he had derived from* " *his right honourable friend's instruction and conversation,* " *were placed in the other, he should be at a loss to decide* " *to which to give the preference**."

The foregoing words do great credit to the candour of Mr. Fox, but in the opinion of the Annalist, I suspect, greater still to the abilities of Mr. Burke. You may yourself collect from circumstances *who* was the person that recorded them—my intention is chiefly, not solely, to prove *what* he was—just, uniformly to Mr. Burke, but in one instance flagrantly unjust to Mr. Sheridan.

" *Debater,*" page 262, line 10 from the bottom.

When Cato had refused to Cicero the honour of a supplication, which he had granted to his own father in law Bibulus, who had just before lost a son, he wrote thus peevishly to Atticus: " Haveo scire Cato quid agat, qui quidem " in me turpiter fuit malevolus, Dedit Integritatis, Jus- " titiæ, Clementiæ, Fidei Testimonium, quod non quæra- " bam. Quod postulabam, negavit id†." So far as my

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* See Annual Register, for 1790, page 69. To the most remarkable words I have affixed italics, which are not in the original.

† Epist. ad Attic. 2nd, lib. vii.

memory goes, Mr. Fox, whatever his friends might do, took no part in opposing the pension granted to Mr. Burke. But, for the honour of human nature, I wish that Mr. Fox could have applied to Mr. Burke's criticism upon the debater, what Cicero, upon another occasion, affectionately wrote to Atticus about Cato's political conduct: "Nam quod "purgas eos quos ego mihi scripsi invidisse, et in eis Ca- "tonem: ego vero tantum illum puto ab isto Scelere ab- "fuisse, ut maxime doleam, plus apud me Simulationem "aliorum, quam istius Fidem valuisse *."

"*Memorable sayings*," page 267, line 3.

Mr. Fox, as it appeared sometimes through his speeches, and more frequently in his conversation, was most extensively acquainted with the memoirs of distinguished statesmen, and especially of those who have adorned our own country. The advantages which a public speaker may derive from such knowledge are well described by Quinctilian: "Neque ea solum quæ talibus disciplinis conti- "nentur, sed magis etiam quæ sunt tradita antiquitus, "dicta ac facta praclare, et nosse, et animo semper agitare "conveniet. Quæ profecto nusquam plura majoraque, "quam in nostræ civitatis monimentis reperientur. Hinc "mihi ille justitiæ haustus bibat, hinc sumptam liberta- "tem in causis atque consiliis præstet. Neque erit per- "fectus orator, nisi qui honeste dicere et sciet, et aude- "bit †."

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* Epist. ad. Attic. 15. lib. iii.

† Lib. xii. cap. 2.

"*While*

"*While Mr. Fox was speaking*," page 270, line 17.

I myself often heard those speeches, and have been inclined to say of them, what Plato says of the effect produced by the conversation of Socrates: "Ἐν ἐμοὶ αὐτὴ "ἡ ἠχὴ τῶν λόγων βομβεῖ, καὶ ποιεῖ μὴ δύναθαι τῶν ἄλλ- "ων ἀκοὴν *."

"*These are excellencies*," page 270, seven lines from the bottom.

Mr. Hume tells us, that "in his time there were about "half a dozen speakers who in the judgment of the pub- "lic had reached very near the same pitch of eloquence, "and no man pretended to give any one the preference "before the rest:" he infers from this, that "none of them "had attained much beyond mediocrity in their art;" and he seems to consider "modern eloquence only as good "sense delivered in proper expressions." But if he had fortunately heard the three great English speakers who are now no more, he in all probability would have changed his opinion upon "the power of modern speakers to inflame "the passions, or to elevate the imagination of their audi- "ence." Nothing can be more sagacious or more just, than the following observations, and they particularly deserve to be noticed in our criticism upon the comparative merits of some speakers whom we have been lucky enough

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* Crito in Fine.

to hear. "The principles of every passion, and of every "sentiment are in every man: and when touched properly "they rise to life, and warm the heart, and convey that "satisfaction by which a work of genius is distinguished "from the adulterate beauties of a capricious wit and fancy. "And if this observation be true with regard to all the "liberal arts, it must be peculiarly so with regard to elo-"quence; which being merely calculated for the public, "and for men of the world, cannot with any pretence of "reason appeal from the people to more refined judges, "but must submit to the public verdict without reserve "or limitation. Whoever upon comparison is deemed by "a common audience the greatest orator, ought most cer-"tainly to be pronounced such, by men of science and "erudition *."

The most enthusiastic admirers of Mr. Hume would not be offended if I were to tell them, that on a subject of oratory Cicero agrees with him, and that in the most luminous language he has set before us the same criteria to which Mr. Hume had appealed.

"Id ipsum est summi oratoris, summum oratorem po-"pulo videri. Quare, tibicen Antigenidas dixerit discipulo "sane frigenti ad populum, 'mihi cane et Musis;' ego huic "Bruto dicenti, ut solet, apud multitudinem, 'mihi cane "'et populo' dixerim: ut qui audient, quid efficiatur, ego "autem *cur* id efficiatur, intelligam. Credit iis, quæ di-"cuntur, qui audit oratorem; vera putat, assentitur, pro-"bat, fidem facit oratio. Tu artifex, quid quæris amplius? "delectatur audiens multitudo, et ducitur oratione, et quasi "voluptate quâdam perfunditur. Quid habes quod dis-"putes? gaudet, dolet, ridet, plorat, favet, odit, contemnit, "invidet, ad misericordiam inducitur, ad pudendum, ad "pigendum, irascitur, miratur, sperat, timet: hæc perinde "accidunt, ut eorum qui adsunt mentes verbis, et sententiis, "et actione tractantur. Quid est, quod expectetur docti

* Hume's Essay on Eloquence.

" alicujus sententia? Quod enim probat multitudo, hoc idem " doctis probandum est; denique hoc specimen est popu- " laris judicii, in quo nunquam fuit cum doctis intelligen- " tibusque dissensio."

Do not suppose that by applying any of the foregoing passage to Mr. Fox, I mean to depreciate his celebrated rival.

But " Divisum imperium cum Jove Cæsar habet." To those who may be inclined to give the preference where I should not give it, I will put the question in another form, and leave them to decide for themselves. " Quando " dubium fuisset apud patres nostros eligendi cui patroni " daretur optio, quin aut Antonium optaret, aut Crassum? " Aderant multi alii: tamen, *utrum* de his potius, dubitasset " aliquis: quin *alterum*, nemo *."

" *Music*," page 273, line 11.

This fact is noticed in the Problems ascribed to Aristotle:

" Διὰ τὶ, ἥδιον ἀκούσιν ἀδόντων ὅσα προεπισάμενοι τυγ- " χάνωσι τῶν μελῶν, ἢ ὧν μὴ ἐπίστωνται; πότερον, ὅτι μᾶλ- " λον δῆλος ὁ τυγχάνων ὥσπερ σκοπῶν, ὅταν γνωρίζωσι τὸ " ᾀδόμενον; τοῦτο δὲ ἡδὺ Θεωρεῖν· ἢ ὅτι ἡδὺ τὸ μανθάνειν; " τούτου δὲ τόδε αἴτιον, ὅτι, τὸ μὲν, λαμβάνειν τὴν ἐπιστήμην, " τὸ δὲ, χρῆσθαι καὶ ἀναγνωρίζειν ἐστίνέτι καὶ τὸ σύνηθες " ἡδὺ μᾶλλον τοῦ ἀσυνήθους †."

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* Vid. Cicero. Brut. page 146, Ed. Grut.

† Aristot. Problem. sect. xix. artic. 5.

" *Correction for the press,*" page 274, line 4.

No man of sense confounds the merit of speeches, as they are delivered in Parliament, with that of speeches as sent from the press. If there be errors in the latter, they may be, and ought to be, corrected; if omissions, they may be supplied; if excellencies, they may be improved; and while the general substance and general manner are preserved, every purpose of propriety and fidelity is sufficiently answered. Mr. Burke, though he was often successful in his extemporaneous effusions, very judiciously determined to rest his fame with posterity, upon those orations which he had revised with the utmost care before they were printed. But Mr. Fox, it is well known, could not be prevailed upon to bestow the same attention even upon his best speeches. No arguments, founded upon the importance of the subjects, or upon the peculiar fitness of his own matter, to admit amplification and increased force, or upon the examples of Mr. Burke, Demosthenes, Cicero, and other celebrated orators, could overcome this determination, except in two or three instances. This particularity of our friend calls to my mind a difficulty which has often perplexed me in the history of Demosthenes. We know from Plutarch, that the admiration which the Athenians felt and expressed towards Callistratus gave the first impression to the mind of Demosthenes upon the astonishing force of popular eloquence. But it is not quite easy to account for the answer he gave, when he was asked whether Callistratus or himself were the better speaker. " Ἐγὼ μὲν γραφόμενος, Καλλίστρατος δὲ ἀκουό-" μενος." That he made this answer can hardly be doubted; and in addition to the testimony just now adduced from the Commentary usually, but improperly, ascribed to Ulpian, we have the declaration of Æsion, who, when desired to give his opinion of the old speakers and his contemporaries, replied " ὡς ἀκέων μὲν ἄν τις ἐθαύ-" μασεν ἐκείνους ἐνκόσμως καὶ μεγαλοπρεπῶς τῷ δήμῳ δια-

"λεγομένους· ἀναγινωσκόμενοι δ' οἱ Δημοσθένους λόγοι, πολὺ "τῇ κἀλασκεύῃ καὶ δυνάμει διαφέρεσι." The words of Æsion seem to imply, that great as might be the superiority of Demosthenes to a mere reader, over later orators, they were equal, or at least not very inferior to him in the art of speaking.

As Demosthenes was very unwilling to address his countrymen without preparation, and as the labour he employed upon his speeches before they were delivered, and before they were published, subjected him to the scoff of Pythias, "ἐλλυχνίων ὄζειν αὐτῷ τὰ ἐνθυμήματα," we are by no means surprised that, in the estimation of Cicero, Quintilian, and all the critics of antiquity, they procured him the praise of being nearly a perfect orator. He is said by Lucian, (ad indoctum) to have transcribed the history of Thucydides seven times, and, in some of my papers, I have stated, as well as I could, the extent, in which our orator is to be considered as the imitator of Demosthenes. Hermippus, as we learn from Plutarch, had met with some anonymous testimony that Demosthenes, with very happy effect, attended the lectures of Plato; and Dionysius of Halicarnassus, in that part of his τέχνη which treats "περὶ τῶν ἐν μελεταῖς πλημμελουμένων," points out some instances in which "συναγωνίζεται κατὰ μίμησιν "τὴν Πλάτωνος *." So intent was he upon giving the utmost perfection to his style, that he is reported by Ctesibius "παρὰ Καλλίᾳ τῷ Συρακουσίῳ, καὶ τίνων ἄλλων τὰς "Ισοκράτους τέχνας καὶ τὰς Αλκιδάμαντος κρύφα λαβὼν "καὶαμαθεῖν †."

As to the judgment passed by Theophrastus that Demosthenes was a speaker "ἄξιος τῆς πόλεως," and Demades, "ὑπὲρ τὴν πόλιν," it refers only to extemporaneous effusions in which Demades, from the natural vigour

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* Edit. Syllburg, p. 61. † Plutarch. in Vit. Dem.

of his mind, and from habit, had confessedly the superiority. The unrivalled excellence of the speeches written by Demosthenes is indisputable. But the difficulty to you and me is, that in the art of delivering them he should have been excelled by Callistratus, and equalled by any other speakers of Greece. For we know that the "τάχος "τῆς ἐπαγγελίας ἀυτοῦ," was admired—that he took the utmost pains to conquer the natural imperfections of his speech—that he declaimed before a "μέγα κάτοπτρον" which he kept at home—that after seeing the skill of Satirus in dumb shew, he thought "τὸ μηδὲν εἶναι τὴν ἄσκη- "σιν, ἀμελοῦντι τῆς προφορᾶς καὶ διαθέσεως τῶν λεγομένων *" —that Cicero, in his orator, declares him "tribuisse primas "et secundas, et tertias actioni"—that, according to Quintilian, "eam videri possit, non præcipuam, sed solam judi- "casse"—that he studied the art with the aid of Andronicus the player—that in order to correct some unbecoming motions in his shoulders, he stood, while he was speaking, "in angusto quodam pulpito," where "hasta "humero dependens immineret"—and, finally, that when some Rhodians, who had been reading his speech "de "Corona," expressed their admiration of it to Æschines, he replied "quid si ipsum audiissetis†." The testimonies in favour of his industry and anxiety to pronounce his speeches with effect are almost as numerous and quite as decisive, as those which inform us of the labour he employed in the choice of matter, and in the decorations of style. I know not, then, whether his concession in favour of Callistratus is to be ascribed to his modesty, or whether it was made at some early period, when he had not attained the excellence which he afterwards reached, and for which he is celebrated by the unanimous voice of antiquity.

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* Vid. Plutarch.

† Vid. Quintil. Ed. Rollin. lib. xi. cap. 3.

" *Perfection*," page 274, line 5.

" Tantum abest," says Cicero, " ut nostra mîremur, " ut usque eo difficiles ac morosi simus, ut nobis non sa- " tisfaciat ipse Demosthenes; qui quanquam unus eminet " inter omnes in omni genere dicendi, tamen non semper " implet aures meas, ita sunt avidæ et capaces, et semper " aliquid immensum infinitumque desiderant *." This might be said by Mr. Burke's readers, and yet the most intelligent of them would apply to Mr. Burke what Cicero in another part of his writings states as his opinion of Demosthenes. " Plane quidem perfectum, et cui nihil " *admodum* desit, Demosthenem facile dixeris." I grant that even in the best speeches of Mr. Burke, men of taste and discernment may find some defects. But I should myself speak of them as Photius does of the faults imputed to Isocrates: " ταῦτα φάμεν πρὸς τὴν ἐν λόγοις αὐτῷ ἀρε- " τὴν, τὸ ἐκπεπτον ἐκείνης καὶ ἀνόμοιον ἐνδεικνύμενοι· ἐπεὶ " πρός γε ἐνίας τῶν γραφειν λόγας ἐπαιρομένων, ἀρεταὶ ἄν " δόξωσι καὶ τὰ ἐκείνε ἐλαττώματα †."

" *Diction*," page 278, line 17.

" Lenis est, et quadrata, virilis tamen compositio ‡."

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* Vid. Ciceron. Orator.

† Vid. Phot. Biblioth. Cod. clix. ‡ Vid. Quintilian, lib. ii. cap. 5.

" *Metaphors*,"

"*Metaphors*," page 283, line 4.

See what Mr. Burke says in the Letter to a Member of the National Assembly, about "the royal name used "by the French as a sort of navel-string, to nourish their "unnatural offspring from the bowels of royalty itself."

In his Letter to the Duke of Bedford he says, "Re- "volutionists unplumb the dead for bullets to assassinate "the living."—"A sort of National Convention nosed Par- "liament in the very seat of its authority."—"The Revolu- "tion harpies of France, sprung from night or hell, or "from that chaotic anarchy, which generates equivocally "'all monstrous, all prodigious things,' cuckoo-like, adul- "terously lay their eggs, and brood over and hatch them "in the nest of every neighbouring state." They who read Virgil's description of the harpies, will acknowledge the taste of the poet, and lament the want of it in Mr. Burke, when he talks of "obscene harpies, fluttering over our "heads, and sousing down upon our tables, and leaving "nothing unrent, unrifled, unravaged, unpolluted with the "slime of their filthy offal." They will be disgusted when they read, "the Duke of Bedford is the leviathan among "all the creatures of the Crown; he tumbles about his un- "wieldy bulk—he plays and frolicks in the ocean of the "royal bounty.—His ribs, his fins, his whalebone, his blub- "ber, the very spiracles through which he spouts a tor- "rent of brine against his origin, and covers me all over "with the spray."

Again, "The only question of their deep philosophers "and brave sansculottes will be that of their Legendre, "or some other of their legislative butchers, How he cuts "up? How he tallows in the cawl or on the kidneys? "Is it not a singular phænomenon, that whilst the sans- "culotte carcase butchers, and the philosophers of the "shambles, are pricking their dotted lines upon his hide, "and like the print of the poor ox that we see in the shop "windows at Chairing-cross, alive as he is, and thinking

" no harm in the world, he is divided into rumps, and sir-
" loins, and briskets, and into all sorts of pieces for roast-
" ing, boiling, and stewing, that all the while they are mea-
" suring *him*, his Grace is measuring *me*."

If upon other occasions Mr. Burke had not given other and happier proofs of his intellectual powers, I should be compelled to say of him, as in a Letter to a Member of the National Assembly, he justly said of Rousseau: " Burke, " a writer of great force and vivacity, is totally destitute " of taste in any sense of the word." But I do not say so, because his excellencies are far more splendid, and his defects far more venial, when he wrote at other times upon other subjects.

" *Loathsome images*," page 283, line 6.

Of Mr. Burke's best speeches, I do not speak too highly, when I say that " φῶς τῷ ὄντι ἴδιον τὲ νὲ τὰ καλὰ ὀνό-
" ματα." But I am under the necessity of observing that, in his Letter to the Duke of Bedford, and in a few, I am glad to say very few passages, in the pamphlets he wrote upon the affairs of France, he fell into the fault which has been properly charged upon an ancient writer, who in splendour of imagination was equal to Mr. Burke. " Τὸν Πλάτωνα ἐχ ἥκιστα διασύρεσι πολλάκις ὥσπερ ὑπὸ
" βακχείας τινὸς τῶν λόγων, εἰς ἀκράτους καὶ ἀπηνεῖς μετα-
" φορὰς καὶ εἰς ἀλληγορικὸν τόμφον ἐκφερόμενον *."

Though I think these words of Longinus strictly applicable to several passages in the writings of Mr. Burke, I would not be understood to assent implicitly to the stric-

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* Longin. sect. 32.

tures of that great critic, or to those of Dionysius of Halicarnassus, upon the works of Plato. When scholars read what Dionysius has written on the style of Plato, in his Dissertation on the Δεινότης of Demosthenes*, and in the Epistle to Pompey†, they will do well to bear in mind the learned and just observation of Wyttenbach: "Dio-"logum primus Zeno Eleates scripsisse fertur: Plato ad "Dramatis Formam redegit, secutus Poetas Tragicos, Com-"icos, Mimicos: quod Prosam Philosophiæ rationem, ni-"mium a vetere Poeseos Usurpatione ac Similitudine avul-"sam, proprius ad eam denuo revocandam censeret. Hinc "Varietas Dialogorum in Genere, sublimi, vel tenui, ut "item Poematum. Quæ Observatio valet adversus Dio-"nysium Halicarnasseum, *hereditario Rhetorum Odio*, Pla-"tonis scripta reprehendentem."

"*Predicted*," page 283, line 4 from the bottom.

I never shall admit that Mr. Burke, when he defended the French monarchy, meant to plead the cause of despotism. I agree with him in his general opinion, that the constitution of France *could* have been preserved, and in his ardent wish, that it had been reformed only, though upon the extent of that reform, we might sometimes have differed. I remember that Rousseau advised the Poles, not to subvert, but to amend their constitution; and if days more evil than the present, should overtake this country, (which Heaven avert,) I trust, that every Leader, and every Follower, of every class, which deserves the name of an English party, may hold, disseminate, enforce, and act upon similar principles. My objection is, to the exaggerated and peremptory language, in which Mr. Burke described

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* Page 166, Edit. Sylburg. † Page 128.

the state, into which France must necessarily be plunged after the revolution; and upon this subject we may already say with Pindar:

" Ἄμεραι δ' ἐπίλοιποι
" Μάρτυρες σοφώτατοι *."

With Mr. Burke's positive and angry predictions, you will be glad to compare the more concise and temperate language of Cicero, about Cæsar and Pompey: " Neutri Σκοπός est iste, ut nos beati simus. Uterque reg- " nare vult. Hæc, a te invitatus, breviter exposui; voluisti " enim me quid de his Malis sentirem ostendere. Προθες- " πίζω igitur, non ariolans uti illa cui Nemo credidit, " sed conjectura prospicieus.

" *Iamque Mari Magno.*
" Non multo, inquam, secus possum vaticinari †."

" *Inflamed,*" page 283, the last line.

You and I, dear Sir, in common with many of our wisest and best friends, shall never cease to lament the fierce and odious animosities which, during the late war, disturbed the comforts of private life, and which owed, I fear, much of their malignity to the popularity of Mr. Burke's writings. But the evil was not confined to this country. Let us hear what a great scholar says of it in his tribute to the memory of the very learned Santenius: " quanquam hæc fuit non tam ipsius culpa, quam tempo- " rum, quorum tanta erat vis, ut non modo homines, alios

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* Olymp. 1. † Lib. viii. ad Attic. Epist. 11.

" ab aliis, etiam conjunctissimos disjungerent, sed singulis " quoque errorem objicerent, et sibi ipsos dissimiles, ex " mitibus duros, et lenibus asperos redderent*."

" *Repugnant to truth*," page 284, two lines from the bottom.

See Monthly Review, for May, 1796.

In addition to the merit of very fine writing, this grave and judicious critique is worthy of serious attention, I do not say implicit, assent, particularly where the author adverts " to the change, not perhaps in Mr. Burke's opi- " nions, but in the general turn, and complexion of his " mind, to his enumeration of his services," in which he is said " to have altogether overlooked the greatest and " most meritorious of them all, his resistance to the claims " of unjust dominion, and to that unhappy war which " severed America from the British Empire—to another " curious change in his mind, when, in speaking of the " reforms to which he was instrumental in 1781, he " dwelt with great force on the indirect, though most " salutary effects, of those measures, in quieting the minds " of the people, while he studiously kept out of sight " their more immediate, and if possible, more important " consequences, in securing public liberty." " He seems," says the Reviewer, " as if ashamed of his exertions for " freedom. In pursuing the detail of his pretensions, we " find him displaying his late supposed services to the " monarchy and the aristocracy, with a triumph almost " equal to the solicitude with which he labours to hide " and palliate his former glorious exertions for the people.

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* Vid. Relationes breviores in Vol. III. Par. iii. of the Bibliotheca Critica, page 107.

" On the late services he professes to rest his title to na-
" tional gratitude; to them he is inclined to trust his fame
" and character with posterity. They form the chief, and
" almost the sole subject, of that extraordinary contrast
" which he draws between his own merits, and the supposed
" demerits of the founder of the house of Russell." The contrast is called extraordinary because, as the Reviewer thinks, " it is wholly impertinent to the subject in discus-
" sion, most dangerous in its spirit and tendency, and
" without foundation in historical truth. If it had been
" only digression, it might have escaped without animad-
" version. But it is liable to more serious objections. By
" exhibiting an odious and detestable picture of the means
" by which great hereditary fortunes have been raised, it
" is calculated to change the respect of the multitude for
" property, into disgust—to let loose their enraged pas-
" sions on that wealth which is the object of their per-
" petual envy, and to lend even to rapine itself, some of the
" features and lineaments of justice. Mr. Burke is not
" charged with intending to produce any of those effects;"
but the Reviewer adds, that " he who suffers himself to be
" hurried by the rage of his passions, of which the con-
" sequences may be so extensively mischievous, cannot be
" acquitted of at least an imprudence, almost as pernicious
" as malevolence itself."

I am very glad to have my own opinion upon the spirit and tendency of Mr. Burke's book, confirmed by the concurrence of the very able Reviewer, whose words I have quoted so largely. And as the authority of Mr. Burke's name may give very dangerous weight to any sentiments which he published, and did not retract, I shall not make any apology to you, my Friend, for the length of the quotation. The Review contains a sufficient refutation of the charge brought against the founder of the house of Russell; and before the appearance of that Review my judgment was fixed upon the subject, not only by my recollection of English history, but by a conversation which I had the happiness to hold with a learned counsellor, whose knowledge upon these subjects is more extensive and more

accurate than that of the Reviewer himself. The accusation is not only unsupported, but directly and entirely confuted by events, and successions of events, as they are related in our history; and whatsoever may be my respect for the general veracity of Mr. Burke, I have never been able to conquer most uneasy suspicions, when upon a topic so interesting to the honour of a great family, and to the feelings of its illustrious representative, I find Mr. Burke contented with making *such* a reference as occurs in his pamphlet.

" My claim," says he, " to a pension, had not its fund " in the murder of any innocent person of illustrious rank, " or in the pillage of any body of unoffending men. His " grants were from the aggregate and consolidated funds " of judgments iniquitously legal, and from possessions " voluntarily surrendered by the lawful proprietors with " the gibbet at their door *."

In support of an allegation so unexpected by the public, and so important to the characters of the dead, and the feelings of the living, should we not require an accurate detail of facts, or specific references to some books in which that detail might be found? Pray mark the *only* reference which Mr. Burke has employed, and remember that it points to the imputed murder of an innocent person of illustrious rank. " See," says Mr. Burke, in his note, " the history of the melancholy catastrophe of the Duke of " Buckingham, Temp. Henry VIIIth."

Rashness and imprudence may have led a common writer to refer in this way: but I cannot conceive that malevolence or cunning could have suggested any thing worse. In some respects, I must in justice to Mr. Burke, express my dissent from the Reviewer. Mr. Burke does *not* keep out of sight other parts of his conduct, some of which in my opinion, and all of which in his own, were meritorious. In page 25 he speaks of those services, in which " for fourteen years without intermission, he had shewn the

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* Letter to a Noble Lord, page 42.

" most industry, and had the least success, on the affairs " of India—services for which he professes to value himself, " most for the importance, most for the labour, most for " constancy and perseverance in the pursuit; and services " which others might value most for the intention*." We may easily conceive why Mr. Burke laid the greatest stress upon these services, even in preference to others which he had performed for the people at large. The judgments of men are, I know, very different upon the merits of those services, and the motives which actuated Mr. Burke. I meddle not with that controversy: but I am bound to state that the Reviewer was mistaken in saying, that " Mr. Burke " had overlooked what appeared to him (the Reviewer) the " greatest and most meritorious of them all." Let Mr. Burke speak for himself.

" My endeavour," says he, " was to obtain liberty for " the municipal country in which I was born, and for all " descriptions and denominations in it. Mine was to sup- " port with unrelaxing vigilance every right, every privi- " lege, every franchise in this, my adopted, my dearer, and " more comprehensive country; and not only to preserve " those rights in this chief seat of empire, but in every na- " tion, in every land, in every climate, language, and re- " ligion in the vast domain that is still under the protection " and the larger that was once under the protection, of the " British Crown."

This, surely, is not *quite* the language of a man who was ashamed of his exertions for public freedom, whatsoever might be the comparative merit which his own judgment would have assigned to those exertions, and his more recent, and, as the Reviewer calls them, his *supposed* services, to the monarchy and the aristocracy. I hold even those services to be very great, though accompanied at the time by a very deplorable and very unjustifiable inattention, and I had almost said, insensibility to the rights of the people.

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* Page 27.

As you know that the late Duke of Bedford was the political, as well as the personal friend of Mr. Fox, you will not blame me for the length of this note. But if the person who wrote the sketch of Mr. Fox's character should chance to see the pains I have employed upon the oversight of the Reviewer, he will meet with one very strong reason for believing that without pretending to the merit of proselytism, I have some regard for truth—that my impartiality towards Mr. Burke is at *least* equal to his own, and that my caution in one instance is greater than that of the Reviewer happened to be.

"*Mystery*," page 285, line 6.

"The British constitution is no simple, no superficial "thing, nor to be estimated by superficial understandings. "It may have its advantages pointed out to wise and re- "flecting minds, but it is of too high an order of excel- "lence to be adapted to those which are common. It "takes in too many views, and makes too many combi- "nations, to be so much as comprehended by shallow "and superficial understandings. Profound thinkers will "know it in its reason and spirit: the less inquiring will "recognize it in their feelings and their experience*."

"*Ambition in him*," page 290, line 10.

You will not be displeased with some verses of Grotius on the pursuit of public honours.

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* Appeal from the New to the Old Whigs.

" Rebus gerendis, publicisque commodis,
" Natus petendis, hunc Honoribus modum
" Prescribe, temet ut offeras, non ingeras.
" Ambire semper, magna Confidentia est;
" Ambire nunquam, deses Arrogantia est *."

" *He valued fame*," page 290, two lines from the bottom.

Let us say of our friend as Tacitus said of Helvidius Priscus: " Civis, Senator, Maritus, amicus, cunctis vitæ " officiis æquabilis, opum contemptor, recti pervicax, con- " stans adversus metus. Erant quibus famæ appetentior " videretur, quando etiam sapientibus cupido gloriæ no- " vissima exuitur †."

" *Predict*," page 292, line 16.

In speaking of Mr. Burke's predictions about France, I have quoted a passage from one of Cicero's letters, in which he writes very modestly about his own prophecies. As I have now imputed something like prediction to Mr. Fox, upon a subject where events have proved his sagacity, I shall take the liberty of observing to you that Cicero, upon other occasions, described the results of his own experience and reflections as a sort of divination.

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* Grot. Epig. lib. i. page 351.

† Tacit. Hist. lib. iv. parag. 4.

" Pulchre igitur Conscientia sustentor, cum cogito me de " Republica certe nunquam nisi divine cogitasse *."

" Cui quidem Divinationi hoc plus confidimus, quod ea " nos nihil in his tam obscuris rebus tamque perturbatis " unquam omnino fefellit. Dicerem quæ ante futura dix- " issem, ni vererer, ne ex eventis fingere viderer †." Cornelius Nepos bears his testimony to the foresight of Cicero. " Ei Rei sunt Indicia * * * * * * sexdecim " volumina Epistolarum, ab Consulatu ejus usque ad ex- " tremum Tempus ad Atticum missarum: quæ qui legat, " non multum desideret Historiam contextam eorum tem- " porum. Sic enim omnia de Studiis Principum, Vitiis " Ducum, ac Mutationibus Reipublicæ perscripta sunt, ut " nihil in his non appareat; et facile existimari possit, " Prudentiam quodammodo esse Divinationem: non enim " Cicero ea solum, quæ vivo se acciderunt, futura prædixit; " sed etiam quæ nunc Usu veniunt, ceciuit ut Vates ‡."

The Letter of Mr. Fox to his constituents, in which he predicts the moral impossibility of conquering France, and a speech in which he afterwards described the consequences of a precipitate alliance with Austria, may be considered as proofs of foresight not very inferior to that skill in divination which Cicero so often ascribed to himself.

" *Wise and virtuous men*," page 292, three lines from the bottom.

Why should not Mr. Fox have the benefit of the plea which a judicious and virtuous biographer employs for the late Sir William Jones?

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* Epist. ad Attic. lib. x. Ep. 4.

† Lib. vi. Epist. 6. ad Attic. ‡ Corn. Nep. Vit. Attici, par. 16.

"Of the French Revolution, in its commencement, "he entertained a favourable opinion, and *in common with* "*many wise and good men*, who had not yet discovered "the foul principle from which it sprung, *wished success* "*to the struggles of that nation for the establishment of a* "*free constitution*: but he saw with unspeakable disgust "the enormities which sprung out of the attempt, and "betrayed the impurity of its origin*."

"*Melancholy experience*," page 294, line 3.

You remember the magnanimous answer of Phocion, when some measures opposed by him, and recommended by Leosthenes, had met with success, which could not reasonably have been expected: "Ἐρωτηθεὶς εἰ ταῦτα "ἤθελεν οὕτω πεπρᾶχθαι, πεπρᾶχθαι μὲν οὖν ταῦτα, ἔφη, "ϛεϐηλεῦσθαι δὲ ἐκεῖνα †."

The failure of certain measures upon the continent, of which Mr. Fox did not approve, during the late war, gave him no opportunity for replying, as Phocion did. But, if such an opportunity had occurred, he would not have wanted firmness to make such a reply, partly from confidence in his own judgment, and partly from joy at the success of our country, and its allies, though it should have far exceeded all reasonable expectation.

"*Unnecessary war*," page 296, line 4.

"For every war," says Mr. Gibbon, "a motive of

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* Lord Teignmouth's Life of Sir William Jones, page 390.

† Plutarch. Apophtheg. vol. ii. p. 188. Edit. Xyland.

" safety or revenge, of honour or zeal, of right or conve-
" nience, may be found in the jurisprudence of conque-
" rors *." But Mr. Fox held the sounder opinion of Caius Pontius: " Justum est bellum, Samnites, quibus necessa-
" rium, et pia arma quibus nulla nisi in armis relinquitur
" spes†." He would have acted in conformity with this principle: but he lamented as I do the application of the terms, just and necessary, to those wars which, in his opinion and my own, might have been avoided.

" *Calculation,* page 296, line 6.

The mind of Mr. Fox was strongly impressed with this important caution: " τὸ πολέμῳ τὸν παράλογον ὅσος ἐστὶ,
" πρὶν ἐν αὐτῷ γενέσθαι, προδιάγνωτε. μηκυνόμενος γὰρ φι-
" λεῖ ἐς τύχας τὰ πολλὰ περιίστασθαι ‡."

" *Offending their pride,*" page 296, line 13.

Mr. Fox might have said with more truth and more propriety than Appius Claudius Crassus, " Nihil se, neque
" privatum, neque in magistratibus, quod incommodum
" civibus suis esset, scientem fecisse: nec ullum dictum
" factumne suum contra utilitatem vestram, (etsi quædam
" contra *voluntatem* fuerint) vere referri posse§."

" *Wise man,*" page 297, line 5.

" In Pace, ut sapiens, aptârit idonea Bello‖.

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* Cap. 65. † Liv. lib. ix. par. 1.
‡ Thucydid. lib. i. par. 78. § Liv. lib. vi. par. 40.
‖ Hor. Sat. ii. lib. 2.

"*Western world*," page 297, line 18.

"Finis Vitæ ejus nobis luctuosus, amicis tristis, ex-
"tranеis etiam ignotisque non sine cura fuit. Vulgus quo-
"que, et hic aliud agens populus, et ventitavere ad do-
"mum, et per fora et circulos locuti sunt: nec quisquam
"audita morte Agricolæ, aut lætatus est, aut statim oblitus
"est*."

Dio Cassius makes a similar remark on the death of Agrippa: "οὐκ ἴδιον τοῦτο τὸ παθὸς τῇ τε Αγριππου "φύσει, ἀλλὰ καὶ κοινὸν πᾶσι τοῖς Ρωμαίοις ἐγένετο †."

"*Prevented the mistakes*," page 297, line 8 from the bottom.

When I look back to the long and eventful period during which Mr. Fox was excluded from power, and to the unfortunate result of the measures pursued by other statesmen, I cannot help applying to him the distich, which Demosthenes a little before his death wrote down in a kind of pocket-book, and which the Athenians afterwards inscribed under the statue of their injured countryman:

"Εἴπερ ἴσην γνώμην ῥώμην, Δημόσθενες, εἶχες·
"οὔ ποτ' ἂν Ἑλλήνων ἦρξεν Ἄρης μακεδών ‡."

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* Tacitus in Vit. Agric. † Dio Cassius, lib. 54.

‡ Vid. Phot. Biblioth. Cod. 265.

"*Hardy enterprises of ambition*," page 297, two lines from the bottom.

Mr. Hume in part of a very philosophical dialogue has with great ingenuity drawn a contrast between the old Athenians and the modern French. I would beg leave to notice a very marked point of resemblance between them, in the unquiet spirit which both indulged in politics, and which, as it was seen in the Athenians, has been well described in the speech of the Corinthian ambassadors: "Εἴτις ξυνελὼν φαίη πεφυκέναι ἐπὶ τῷ μήτε αὐτὸς ἔχειν "ἡσυχίαν, μήτε τὸν ἄλλους ἀνθρώπους ἐᾶν, ὀρθῶς ἂν εἰ- "πoι *."

"*Now threatens*," page 298, line 3.

Since I wrote the above passage Spain has made a noble effort to recover her independence, and set an example which I hope will be vigorously and successfully followed by the other states of Europe.

"Ille dies primus docuit, quod credere nemo
"Auderet Superis, Martis certamine sisti
"Posse ducem Lybiæ †."

Napoleon seems, as was said of Philip, "μεθύειν τῷ "μεγέθει τῶν πεπραγμένων ‡." But I trust, that instead of meeting with Philip's success, he will in the consequen-

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* Thucydid. lib. i. parag. 70. † Sil. Ital. xii. 271.

‡ Demosth. Philip. 1.

ces of his own rash and rampant ambition experience the justness of Hannibal's observation: "Non temere incerta "casuum reputat, quem Fortuna nunquam decepit*." Let us not despair. The people who have opposed themselves to this mighty conqueror "Virtute pares, necessi- "tate, quæ ultimum ac maximum telum est, superiores "sint†." May the Sovereign, the Parliament, and the people of England, sympathizing in a common and just cause, hereafter have occasion to exclaim, "En unquam ille dies "futurus erat, quo vacuam Hostibus Hispaniam visuri "essemus. Dedit tandem id *Deus*—nec desunt qui Deo "Grates Agendas censeant‡."

To arm the hand of a son against the life of a Sovereign and a father, is an atrocity reserved for Napoleon. Gregory the Fourth encouraged the sons of Louis the Debonnair in dethroning their parent. Urban the Second stirred up Conrad against the unfortunate Emperor Henry the Fourth. But the rebellion of these unnatural children was not aggravated by an attempt at parricide.

If a virtuous heathen were told of the horrible machinations to which the Prince of Austurias is said to have been instigated, he might be tempted to exclaim, "Proh "Dii immortales! cur interdum in sceleribus hominum "maximis, aut connivetis, aut præsentis fraudis pœnas in "diem reservatis§?" But if he were to check for a while the tumults of honest indignation—if he were to reflect upon the dark and "slippery places" in which lawless ambition is often doomed to tread—if he were to feel the smallest reliance upon what yet remains of courage or virtue in an insulted and oppressed world, he might find some consolation in the well-founded observation of Cæsar: "Consuesse Deos immortales, quo gravius homines ex com- "mutatione rerum doleant, quos pro scelere eorum ulcisci

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* Liv. lib. xxx. parag. 30. † Lib. iv. parag. 28.

‡ Lib. xxx. parag. 21. § Cicero. pro M. Coelio.

" velint, his secundiores interdum res, et diuturniorem im-
" punitatem concedere *."

Much has been said vauntingly, and much falsely, of that indifference to danger and to death which the French philosophy infused into the French armies. I believe not the fact, that the tenets of that philosophy ever were communicated to soldiers. I should not have looked for that effect, even if they had been communicated: and I see causes quite sufficient to account for their valour and their victories in the new and peculiar circumstances of their country, in the divisions, jealousies and inveterate prejudices of their enemies, in the skill of their Generals, in the policy, heroism, and example of their Emperor, in their excellent discipline, in their revolutionary ardour, and in the numberless temptations which the condition of Europe presented to their vanity, ambition, and rapacity. But the Spaniards with whom they are contending, are, I hope, actuated by the purest and strongest motives which can influence the human mind. Under the auspices of leaders truly patriotic they will shew, what a *people* can atchieve as opposed to *mercenaries*—a people fighting for their laws, their independence, their families, their friends, and the religion of their fathers.

" First appearances," says Mr. Hume, " are no where " more delusive than in politics," and the justness of the remark has received fresh illustration from the strange events which have occurred in Spain and Portugal, since this note was sent to the press. My opinions, alas! are beginning to languish into mere wishes. In a cause which appeared to me morally sound, and politically important, I am unwilling to despair. But, such measures as we have lately seen opposed to the hosts and the councils of such a foe as Napoleon, afford, I must confess, little encouragement to hope. While, however, the patriot sighs over the dangerous situation of his own country, the Christian will remem-

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* Cæsar de Bell. Gall. lib. i. p. 18. Delph. Edit.

ber with triumph, that the detestable court of the Inquisition has been crushed under the arm of power, for once lifted up in favour of justice and humanity. But why was the glorious privilege of abolishing that spiritual tyranny abandoned to the policy or the mercy of an invader, who upon this one atchievement may found a claim to the title of a deliverer? "Fas est et ab hoste doceri." Every year, and I had almost said, every month, brings before my countrymen some awful warning against the systematic continuance, both of restraints which every incensed sufferer calls intolerance, and of practices, which every disinterested observer knows to be inveterate and pernicious abuses.

"Ἀνίστανται," page 300, line 14.

Plutarch in the life of Demosthenes expresses a doubt whether Demosthenes alluded "πρὸς τὸν λόγον τῇ ἀνδρὸς "ἢ πρὸς τὸν βίον καὶ τὴν δόξαν." I apply the expression to Mr. Fox in reference, not to his Parliamentary eloquence, but to his political integrity.

"*Conjiciebat*," page 300, line 6 from the bottom.

I shall save you trouble by setting before you the passage to which Cornelius Nepos refers.

"Ἦν ὁ Θεμιστοκλῆς βεβαίοτατα δὴ φύσεως ἰσχὺν δηλώσας, "καὶ διαφερόντως τὶ ἐς αὐτὸ μᾶλλον ἑτέρᾳ ἄξιον θαυμάσαι. "εἰκείᾳ γὰρ ξύνεσει, καὶ ἅτε προμαθὼν ἐς αὐτὴν ἀδὲν, ἅτ'

" ἐπιμαθὼν, τῶν τε παραχρῆμα δι' ἐλαχίστης βουλῆς κράτιστος
" γνώμων, καὶ τῶν μελλόντων ἐπιπλεῖστον τὰ γενησομένα ἄριστος
" εἰκαστής, καὶ ἃ μὲν μετὰ χεῖρας ἔχοι, καὶ ἐξηγησάσθαι
" ἱκανὸς τε· ὧν δὲ ἄπειρος εἴη, κρῖναι ἱκανῶς ἐκ ἀπήλλακτο.
" τό, τε ἄμεινον ἢ χεῖρον ἐν τῷ ἀφανεῖ ἔτι προεώρα μάλιστα,
" καὶ τὸ ξύμπαν εἰπεῖν, φύσεως μὲν δυνάμει, μελέτης δὲ
" βραχύτητι, κράτιστος δὴ οὗτος αὐτοσχεδιάζειν τὰ δέοντα
" ἐγένετο."

A. ρλη. 75, &c.

" Themistocles manifestam sui Ingenii Vim certissime
" demonstraverat, et hac in Re multo majore admiratione,
" quam ullus alius dignus erat. Nam naturali Prudentia
" præditus erat, nec quicquam aut ante aut postea didice-
" rat, quod eam augeret; et rerum improvisarum, cum
" brevissima Deliberatione Judex erat præstantissimus,
" et futurarum, ac Eventus ipsarum plerunque optimus
" Conjector; quæ autem in Manibus habebat, ea etiam ex-
" plicare atque exsequi poterat: quorum vero esset imperi-
" tus, ab his commode judicandis non erat alienus; quid
" etiam melius, quidve deterius esset in Rebus adhuc ob-
" scuris et incertis optime prospiciebat. Utque Rem totam
" paucis expediam; et Naturæ Bonitate, et Consilii Ce-
" leritate, vir iste maxime idoneus fuit ad explicandum
" ex Tempore, que ad Rem facerent, et e Re essent."

" *Cheering exception*," page 301, line 7 from the bottom.

" Hæc tibi vera fides quæsiti, Magne, favoris
" Contigit, ac fructus: felix se nescit amari *."

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* Lucan. lib. vii.

"*Attachment*," page 301, line 3 from the bottom.

"Is enim denique Honos mihi videri solet, qui non "propter Spem futuri Beneficii, sed propter magna Merita "claris Viris defertur et datur *."

"*Private virtues*," page 302, line 3.

We remember the observation of an illustrious French hero, "that no man appears great before his valet;" and perhaps it may be said with justice of nearly all men distinguished by talents or by station: "Major e longinquo "Reverentia †." But Mr. Fox, "magnæ subnixus Robore "Mentis ‡," was, I think, a splendid exception to the general rule. Such was the superiority of his whole mind to simulation and dissimulation—such the exemption of his temper and manners from petty conceit, and wayward singularity—such the happy medium both of his public and private life "inter abruptam contumaciam et deforme "obsequium §," that they who approached him oftenest, esteemed him most; and while their regard for him was confirmed, their respect for him was not diminished. Upon reflection, indeed, even their admiration was heightened, when they observed that he who was eminent in great things had the power, without effort, and without art, to please friends, strangers, and domestics, upon all those

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* Vid. Cicero. Epist. ad familiar. lib. x. Epist. 10 to Plancus.

† Tacit. Annal. lib. i. parag. 10.

‡ Martial. lib. i. Epig. 40. § Vid. Tacit. Annal. lib. iv. par. 5.

little occasions on which other men are rarely found to unite simplicity with propriety, and to preserve dignity without indulging self-importance.

" *Swinish herd,* page 302, line 6 from the bottom.

Mr. Burke probably would have exulted, if he had known that in the Greek language the καλοικἀγαθοὶ were sometimes opposed τῷ δήμῳ. Poets and Rhetoricians may teach us " malignum spernere vulgus." But the avowal of such a principle would not be very decorous in the legislators of a free country, especially in an age when the progress of knowledge and civilization had lessened the moral differences which, in some degree or other, will always subsist between the higher and the lower classes of society.

" *Contempt of pelf,*" page 303, line 3.

We all know the rapacity of men raised to high station, not only in Turkey, but in some Christian governments, and we have heard with pleasure that Turgot and Necker in a neighbouring country were exempt from that vice. In our own nation the instances of it are very rare; and I have often thought that our own times presented a glorious spectacle to the Christian world, when the two great rivals for power, Mr. Pitt and Mr. Fox, were known to be neither wealthy, nor desirous of wealth, in a country where property, landed and commercial, has great weight even in public affairs. Mr. Pitt's father was distinguished by his indifference to the acquisition of a fortune; and

the impression which this virtue made in other countries may be seen in the following words of a learned foreigner: "Qui Reipublicæ singulisque Hominibus officia præstant, "non Præmiorum Spe adducti, sed solo Studio recte éque "Republica agendi, illorum Factum est majus quam Facta "aliorum. Sic Anglus ille Pitt, Comes Chattam laudatur "et pro magno Viro habetur, qui in omnibus Rebus non "suam, sed Reipublicæ Utilitatem spectavit *."

"*Long enough in office*," page 304, line 8.

"Αρχὰ," said Bias, "δείξει ἄνδρα †," and the same thought has been expanded by another writer.

"Αμήχανον δὲ παντὸς ἀνδρὸς ἐκμαθεῖν
"Ψυχήν τε, καὶ φρόνημα, καὶ γνώμην, πρὶν ἂν
"Ἀρχῇσι, καὶ νόμοισιν ἐντριβὴς φανῇ ‡."

I have often heard it remarked while Mr. Fox was out of power, that he was better qualified to lead a party in opposition, than to hold any high office in the British nation; that it was much easier to object to measures, than to plan them; and that Mr. Fox's Parliamentary eloquence was a very equivocal proof of his political wisdom. Luckily for the well-wishers of Mr. Fox, they were at last supplied with an opportunity for bringing

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* Vid. Scheller's Præcepta Styli bene Latini, lib. II. cap. ii. parag. 2. de Gravitate dicendi.

† Vid. Andronicus Rhodius, lib. 5.

‡ Soph. Antigone 181.

his character to the test implied in the maxim of old Bias, and they may with confidence appeal to the judgment of impartial men upon the measures pursued or proposed by Mr. Fox, during the few months he was capable of acting for his country in 1806.

"*Complicated relations*," page 304, line 9.

I enter not into the momentous question which is now agitated about the dominion of the seas. But if you wish to see a clear and concise statement of the Thalassocracy exercised in different times by the states of antiquity, you will find it in Casaubon's Note upon the Æginetæ *.

"*Sepulchres*," page 310, line 16.

When I wrote this word my memory deceived me. Atterbury died at Paris, February 17, 1731: but his body was brought to England, and interred the 12th of May following, privately, in Westminster Abbey.

"*Unmerited indignities*," page 310, three lines from the bottom.

You have often sympathized with the generous indigna-

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* Vid. pp. 195, 6, 7 of the Commentary on Polybius.

tion of Dr. Johnson where he describes the situation of Warburton, when chased and teased by an ignoble foe. "I "remember," says he, "the prodigy in Macbeth:

"An eagle tow'ring in his pride of place,
"Was by a mousing owl hawk'd at and kill'd."

It was the lot of Mr. Fox to meet with an assailant, who united all the mischievous qualities which Johnson in his preface to Shakespeare imputes to the two antagonists of Warburton. In a moment of petulance, "he would sting "like a fly, suck a little blood, take a gay flutter, and return "no more." But in seasons of rage "he would bite like a "viper, and would have been glad to leave inflammation and "gangrene behind him." Never can the well-wishers of Mr. Fox forget the treatment which he experienced from the opponent to whom I advert, when enfeebled by disease and harrassed by care he attended the business of the house of Commons in the Session before his death. The strength of that opponent bore, indeed, little proportion to his malignity. But his noisy, restless, querulous, insolent freaks of hostility must often have brought to your mind the odious office which a poet of antiquity has assigned to one of the Diræ; and often has he provoked me, with a slight alteration of Virgil's language, to exclaim,

"Alitis harum una in parvæ conlecta figuram,
"Quæ deserta fori circum subsellia quondam
"Importuna canit, Turni se pestis ob ora
"Fertque refertque sonans, clypeumque everberat alis*."

* Æneid, xii.

NOTE

NOTE

UPON

MR. FOX'S HISTORY

OF THE

EARLY PART OF THE REIGN OF JAMES II.

HAVING stated my expectation that Mr. Fox's projected History would not be unworthy of his general fame, and that the correctness of the style would be proportionate to the importance of the matter, I intended to communicate to you such remarks as might occur to my mind upon the perusal of a work which had not appeared when I began to address you. But my opinions have been so largely anticipated, so luminously expressed, and so judiciously defended by two very able writers in the Edinburgh and Monthly Reviews, that, having little to add to those critiques, and nothing to oppose to them, I abandoned my determination. "By the common sense of readers," says Johnson, "uncorrupted with literary prejudices, after all "the refinements of subtilty, and the dogmatism of learn-"ing, must be finally decided all claim to poetical hon-"ours*." This observation may be extended to every kind of literary composition. Enough has been already done by criticism to assist the judgment of the public upon Mr. Fox's work; and when political partialities and animosities shall have spent their force, the merits of that History will be more distinctly understood, and more justly appreciated. Possible it is that my own deep reverence and affectionate regard for the writer, may have some degree even of undue influence upon my own mind. But after a most careful perusal, I find no reason to change

* Life of Gray.

any one opinion which I had previously formed, except that in which I supposed that he would not stoop to the use of low expressions. *What* indeed they are, in a dead or even in a living language, must often be decided by the different tastes of different men. From principle Mr. Fox employed many familiar phrases, which I should have rejected as inconsistent with the gravity and dignity of the historic style. But from his well-known diligence and solicitude in the correction of his own writings, I am persuaded that he would have altered several passages in which men of sense must perceive negligence in the choice of his phraseology, intricacy or laxity in the structure of his sentences, and harshness or feebleness in the rhythm of his periods.

If Demosthenes was content to retort the poignancy, without disputing the justice of the remark made by Pythias, "ἐλλυχνίων ὄζειν αὐτοῦ τὰ ἐνθυμήματα*"—if Plato "τοὺς ἑαυτῷ Διαλόγους κτενίζων, καὶ βοστρυχίζων, καὶ πάντα "τρόπον ἀναπλέκων, οὐ διέλιπεν ὀγδοήκοντα γεγονὼς ἔτη," and if in his tablets were found several variations of the short sentence "κατέβηνχθὲς εἰς Πειραῖα†"—if Cicero doubted whether as a Homo Romanus, he should write Piræum or Piræa, and whether he should, or should not use a preposition, when he spoke of it, not as Oppidum, but Locum‡—if in his correspondence with Atticus he anxiously corrected a favourite correction of a favourite passage in lib. i. De Oratore, and thus wrote "*inhibere*§ illud tuum "quod valde mihi arriserat, vehementer displicet; est enim

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* Vid. Plutarch. in Vit. Demosth.

† Vid. Dionys. Halicar. de Struct. page 239. Upton's Edit. and Quintil. lib. viii. cap. 6.

‡ Vid. Epist. iii. ad Attic, lib. 7.

§ "Postquam *inhibent* remis puppes, ac rostra recedunt."
LUCAN, lib. iii. v. 659.

" verbum totum nauticum: quanquam id quidem scribam. " Sed arbitrabar sustineri Remos, cum inhibere essent jussi. " Id non esse ejusmodi didici heri, cum ad Villam nostram " Navis appelleretur, non enim sustinent, sed alio modo " remigant. Dices hoc idem Varroni, nisi forte mutavit*." If in such great writers Mr. Fox had examples of such great diligence, he must have known that the Limæ Labor et Mora were not unworthy of his own taste, or age, his dignified situation as a statesman, or his established fame as a speaker in Parliament. We may trust his good sense for having endeavoured to avoid that Κακόζηλον into which writers are seduced, " quoties Ingenium Judicio earet et " Specie Boni fallitur;" and we may be assured that he never would have been tempted, " quod recte dici potest, " circumire amore Verborum, et quod uno verbo patet, " pluribus onerare †."

Mr. Fox read extensively: he reflected deeply: but he seldom composed. The remark which Cicero makes upon the qualifications which are necessary for a good speaker,

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* Epist. xxi ad Attic. lib. 13. Upon the authority of a Letter of Tiro, Aulus Gellius informs us that, when Pompey had enquired of some learned men at Rome, whether, in an inscription for the Æd. Victoriæ, which he was about to dedicate, it should be written tertium or tertio, Cicero felt the same uncertainty, which, in truth all scholars must sometimes feel, and ingenuously said, " se judicare de viris doctis veritum esse." He therefore advised Pompey, " ut neque *tertium* neque *tertio* scriberetur: sed ad se- " cundum usque T fierent Litteræ, ut verbo non perscripto res " demonstraretur: sed dictio (i. e. the pronunciation) tamen ambi- " gui verbi lateret." Men of letters, I believe, now write according to the opinion of Varro, which A. Gellius has recorded. " Quarto locum adsignificat, et tres ante factos. Quartum tempus " adsignificat, et ter ante factum." (Vid. A. Gell. lib. x. cap. 1. Non. Marcell. cap. 5. par. 50, and Cornel. Fronto, page 1340 of the Auctores Latini, published Colon. Allobrog. 1622.)

† Quintil. lib. viii. Proœm. et cap. 3.

may be applied more directly and more frequently to that exercise of the mind which is necessary to form a very good writer. "Caput est, quod, ut vere dicam, minime "facimus, est enim magni laboris quem plerique fugimus, "quam plurimum scribere. Stylus est optimus et præstan- "tissimus dicendi effector et magister *." This position of Tully is noticed by Quintilian, who, with his usual good sense, has assigned a chapter to the subject in his tenth book, and, with his usual sagacity, demonstrated the necessity "scribendi diligentissime et quam plurimum." Mr. Fox, who carried about him as an author, the same artlessness and docility, which pervaded every other part of his character, would have profited by the instructions of such masters, as Tully and Quintilian.

There is always danger lest the habit of public speaking should have some influence on the mind of a writer, and infuse into the productions of his pen such peculiarities of manner as distinguish his speeches. This effect is often visible in the political writings of Mr. Burke, though, in justice to that wonderful man, I would except his "Thoughts upon the Causes of popular Discontents;" and we all remember that his admirable work on the Sublime and Beautiful had been prepared for the press before he became known to the public as an orator. It is, however, worthy of remark, that in the rhetorical, philosophical, and epistolary writings of Cicero, scarcely any vestiges can be found of the exuberance and splendour which appear in his orations. We always indeed meet with perspicuity and elegance, and sometimes, even with copiousness. But the general character of his style is uniformly adapted to the matter or the occasion; and though we recognise Cicero, we lose sight of the orator.

"Mille habet Ornatus, mille decenter habet."

Mr. Fox, for a time, might have found it difficult to disengage his thoughts or his words from the form which

* De Oratore, lib. i.

they had been accustomed to assume, and perhaps the order in which they had been accustomed to occur to him, when he was speaking in Parliament. But with all the imperfections which the acutest critic can discover in his History, and which leisure would have enabled him to correct, the excellencies which characterise his best speeches in the House of Commons, often present themselves to our view in the work lately published. In conformity to the precept of Cæsar, "habuit semper in memoria atque in "pectore, ut tanquam scopulum, sic fugeret inauditum et "insolens verbum*." He shunned the faults into which Hortensius is said to have fallen. When we reflect upon Mr. Fox as a speaker, "longius procedens et in cæteris "eloquentiæ partibus tum maxime in celeritate et contin- "uatione verborum adhærescens sui dissimilior *non* vide- "batur fieri quotidie." If we turn to him as a writer, "cum jam honores et illa senior auctoritas gravius quid- "dam requireret, remanebat idem, et decebat idem†."

In a very elaborate, and, I believe, a rare book of Falster, called Memoriæ Obscuræ, the second chapter treats "de Ingeniis Romanis, quæ Eruditionis et Litterarum "gloria absque scriptis floruerunt." Now it deserves to be noticed that most of the persons whom Falster has rescued from oblivion, were orators; and this fact would be surprising to us, if we were not prepared to hear it by the mention of other orators, whose names have been preserved to us, and the character of whose style has sometimes been shortly described by Cicero, Quintilian, and the unknown writer of the Dialogus de Oratoribus, subjoined to the common editions of Tacitus. Happy, then, must be the friends of Mr. Fox, that, if any future scholars should write, upon our own countrymen, a book similar to that of Falster upon the Romans, the name of Mr. Fox will not be included among them. Had he lived, indeed, to finish his work, he would have experienced more and more the

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* Vid. Fragment in the Editions of Cæsar.

† Vid. Cicero's Brutus, near the conclusion.

truth of Quintilian's observation: "Paulatim res facilius "se ostendent, verba respondebunt, compositio sequetur, "cuncta denique, ut in familia bene instituta, in officio "erunt. Summa hæc est rei: cito scribendo, non fit bene "ut scribatur; bene scribendo, fit ut cito*." As to the examination of facts, whether admitted into history, or preserved only by tradition, his labour would have been undiminished. But the necessity of all the diligence and all the solicitude which are ascribed to him, must be apparent, when we reflect upon the negligence, or the credulity, or the unfairness of his predecessors; and that history, beyond every other kind of composition, requires the most unwearied perseverance and the most rigorous impartiality, is obvious to our common sense, and has been illustrated by a most judicious writer *de Incertitudine Historiæ*, in a learned and philosophical dissertation, which you may see in the "Additamentum ad decem Libros Obser- "vationum Selectarum ad Rem litterariam pertinentium." Halæ Magdeburg.

Many may be the faults which as Cicero says in the Brutus, "non quivis unus ex populo, sed existimator doc- "tus et intelligens possit cognoscere." But the general character of Mr. Fox's style is purely English†; and, as to the rejection of a word, for which he had not the authority of Dryden, it is a fancy which seems to me not less unwise than the fastidiousness of the Ciceronian sect‡,

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* Lib. x. cap. 3.

† "Πρώτη τῶν ἀρετῶν γένοιθ' ἂν, ἧς χωρὶς οὐδὲν τῶν ἄλλων "τῶν περὶ τὰς λόγους ὄφελος· τίς; ἡ καθαρὰ τοῖς ὀνόμασι καὶ "τὸν Ελληνικὸν χαρακτῆρα σώζουσα διάλεκτος." Dion. Halicarn. Ep. ad Pomp. de Platone, parag. 15.

‡ "Quemadmodum," says Falster, "Philosophia, (quod Cle- "mens Alexandrinus dixit) non est dicenda Stoica, nec Platonica, aut "Epicurea, aut Aristotelica, sed quicquid ab his recte dictum est, "quod docet Justitiam cum vera Scientia. Hoc totum selectum

and which Mr. Fox's own example proves to be more "honoured in the breach than the observance." Dryden, with all his numerous and all his exquisite beauties, could not have supplied all the peculiar forms of writing for which an historian has occasion, and if Mr. Fox was determined to employ no expression which English writers of celebrity had not employed before him, he might have found in those writers every word, and every combination

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"dicendum est Philosophia: sic latinitas non Ciceroniana dicenda "est, non Terentiana, non Plautina, sed quicquid a diligentissimo "quoque scriptore Latino proprie et emendate dictum, id demum "civitate Latina dignum judicator." (Vid. Falsteri, Amænitat. Philolog. vol. ii. cap. 11, and Cl. Al. Stromat. lib. i. par. 7.) You will not join in any cry of pedantry against me for saying that in the word Ciceronianum, as sometimes used by the modern writers of Latin, there is more propriety than some scholars may perceive at first sight. "Ciceronianum nomen ferri potest, ut recentioribus "maxime usitatum. Sed velim antiqui et probati scriptoris locum "mihi demonstrari, ubi Ciceronianum nomen, Ciceroniani libri, Cice-"roniana merita in Rempublicam dicantur, pro Ciceronis ipsius "nomine, libris, meritis. Illius ætate sine dubio Tullianum "dicebant quicquid profectum erat a Cicerone aut ad ipsum proprie "pertinebat, et si quis Adjectivum volebat ab hoc Agnomine duc-"tum, Ciceronium potius dicebat. Sicut a Cæsone dicitur Cæso-"nium, a Stilicone Stiliconium, a Marone Maronium sive Maro-"neum, sed ex Analogia Ciceronianum debebat esse id quod minus "arcte nexum et cum Cicerone conjunctum est, ita ut Ciceronianus "esset imitator Ciceronis, oratio Ciceroniana, oratio similis oration-"ibus Ciceronis;" see page 7 of Weiske's preface to his Commentary on the Speech for Marcellus, the authenticity of which he has endeavoured to defend, ingeniously, but, I think unsuccessfully, against the criticisms of the learned and acute Wolfius. No man, you will tell me, in the words of Johnson, forgets his original trade; I am not ashamed of mine; and if I had been writing to Mr. Fox, as I now am to you, upon style, he would not have blamed me for remembering such a passage as I now recommend to your perusal.

of words which might be necessary for every purpose of perspicuity and correctness, elegance and strength.

Far be it from me to withhold the smallest portion of that praise which is due to a Robertson, a Hume, or a Gibbon*. But I must confess, that the style of Mr. Fox approaches more nearly than that of the writers just now mentioned, to the excellence which, in my opinion, is peculiarly becoming in Historical compositions. Upon this subject I have long thought in the same way with my illustrious schoolfellow and friend Sir William Jones, and under the protection of his authority and his words I will communicate my own fixed judgment.

" It may perhaps be expected that some account should " here be given of the Persian history, which I was thus " appointed to send abroad in an European dress, with some " remarks on the veracity and merit of its eastern author; " but, before we descend to these minute particulars, it " will not be foreign from the subject of the present publica- " tion, to enquire into the general nature of historical com- " position, and to offer the idea, rather of what is required " from a perfect historian, than of what hitherto seems to " have been executed in any age or nation.

" Cicero, who was meditating an history of Rome, had " established a set of rules for the conduct of his work, which " he puts into the mouth of Antonius in his treatise on the " accomplished orator; where he declares ' the basis and " ' ground-work of all history to depend upon these primary " ' laws, that the writer should not dare to set down a false- " ' hood, nor be deterred by fear from divulging an interest- " ' ing truth; and that he should avoid any just suspicion " ' of partiality or resentment: the edifice, he adds, which " ' must be raised on this foundation, consists of two parts, " ' the relation of things, and the words in which they are " ' related; in the first, the historian should adhere to the or- " ' der of time, and diversify his narrative with the descrip-

* " Lumina orationis velut oculos quosdam eloquentiæ esse " credo: sed neque oculos esse toto corpore velim, ne cætera " membra suum officium perdant." (Quintil. lib. viii. cap. 5.)

" ' tion of countries; and since, in all memorable transac-
" ' tions, first the counsels are explained, then the acts, and
" ' lastly, the events, he should pronounce his own judg-
" ' ment on the merit of counsels; should show what acts
" ' ensued, and in what manner they were performed; and
" ' unfold the causes of all great events, whether he imputes
" ' them to chance, or wisdom, or rashness: he should also
" ' describe, not only the actions, but the lives and cha-
" ' racters, of all the persons, who are eminently distin-
" ' guished in his piece; and, as to the words, should be
" ' master of a copious and expanded style, flowing along
" ' with ease and delicacy, without the roughness of plead-
" ' ings at the bar, or the affectation of pointed sentences *.'

" If we form our idea of a complete historian from
" these rules, we shall presently perceive the reason, why no
" writer, ancient or modern, has been able to sustain the
" weight of so important a character: which includes in it
" the perfection of almost every virtue and every noble accom-
" plishment, an unbiassed integrity, a comprehensive view of
" nature, an exact knowledge of men and manners, a mind
" stored with free and generous principles, a penetrating
" sagacity, a fine taste and copious eloquence: a perfect
" historian must know many languages, many arts, many

" * De Orat. lib ii. 15."

Some of the best observations I have ever seen upon the diction, the topics, and the arrangement of history, may be found in Mr. Hampton's preface to his excellent translation of Polybius. Has it ever occurred to you, my friend, that marks may be traced of two styles, and even two minds in that preface? When I had pointed out some instances to the learned and sagacious Sir James Mackintosh, he agreed with me in my conjecture that the Whig translator was indebted for some expansion of his matter, and some embellishments of his language to a Tory auxiliary, who is known to have been acquainted with him, and who at a later time directed his satire against false alarms, and his eloquence against unnecessary wars.

" sciences; and, that he may not be reduced to borrow his " materials wholly from other men, he must have acquired " the height of political wisdom, by long experience in the " great affairs of his country, both in peace and war. There " never was, perhaps, any such character; and perhaps there " never will be: but in every art and science there are cer- " tain ideas of perfection, to which the works of human genius " are continually tending, though, like the logarithmic spiral, " they will never meet the point to which they are infinitely " approaching. Cicero himself, had he found leisure to ac- " complish his design, though he would have answered his " own idea in most respects, would have been justly liable to " the suspicion of an illiberal bias in relating the history " of his own times, and drawing the several characters of " his age.

" The very soul and essence of history is truth, without " which it can preserve neither its name nor its nature, and " with which the most indifferent circumstances in a barren " chronicle are more interesting to a sensible reader, than " the greatest events, how copiously or elegantly soever " they may be described, in a romance or a legend: yet it " is strange, that, of so many histories, ancient or modern, " European or Asiatic, there should be so few, which we " can read without asking in almost every page, *Is this* " *true**?"

After some remarks, worthy of his unparalleled erudition and correct taste, upon some ancient and modern Historians, Sir William Jones goes on thus:

" The English historians are not to be read without " caution: Clarendon himself is often liable to exception, " both in sentiment and style; and our language, indeed, " was never entirely polished till the present century. I " avoid touching upon the works of living authors; lest, in

* Preface to Sir William Jones's History of the Life of Nader Shah, &c.

" my very preface, I should violate a fundamental law of " history, by incurring the suspicion of prejudice for a " particular nation, or affection for particular men; but " another law obliges me to declare, that there are historians " now in Britain, whose writings have sufficiently proved, " that if their subjects were equal to their talents, they " would be able to contest the merit of veracity, judgment, " and elegance with the Ancients themselves. That perfect " liberty, which forms the very essence of our constitution, " makes it unnecessary for an English historian to flatter " any potentate or statesman upon earth; and our language, " though inferior to the Greek and Roman, will not yield " the prize of energy, variety, and copiousness, to any mo- " dern idiom whatever *."

Give me leave, dear Sir, as Mr. Fox would have done, to digress a little to another topic, which the preface of Sir William Jones to his Persian History, recals to my memory.

The learned Mr. Thomas Warton, in an inaugural speech, which, as Camden Professor of History, he delivered at Oxford, and which, in correctness and elegance far surpasses all his other Latin compositions, has confessed himself unable to understand what is meant by the *lactea ubertas* ascribed to Livy †. Mr. Warton said this in 1786. Now

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* Preface to Sir William Jones's History of the Life of Nader Shah, &c.

† " Livius artificio dicendi et facundiâ vel summis Græcorum " par; dignusque qui victoris omnium gentium populi gesta im- " mortalitati traderet. In narrando quidem et describendo per- " jucundus est; ita tamen regnat et dominatur in concionibus, ita " personas induit diversas, et accommodate loquentes inducit, et " cum proprietate sustinet, etiam ad affectus permovendos, ut non " modo consurgat ad laudem perfecti oratoris, sed et persæpe " peritissimi dramatici poetæ specimen præ se ferat. Plenus est " dignitatis et gratiæ: non tamen video quid sibi velit Quintilianus, " ubi Livii *lacteam* ubertatem prædicat; nam certe abruptior

Sir William Jones, in his preface to the history of Nader Shah, which appeared in 1773, had made a similar confession. "It is not easy" says he, "to conceive what the ancients mean by the *lactea ubertas* of Livy: in many parts of his work he shows great candour and judgment, but his style is not remarkable for ease or copiousness."

The expression to which Sir William adverts must strike every reader forcibly, and in a very long catalogue of Editors and Philologists, which Drakenborch has inserted in the seventh volume of Livy, there are several * who have adopted the opinion, and even repeated the language of Quintilian. Now it can hardly be supposed, that with all their partiality for Livy, and all their veneration for Quintilian, so many critics would have selected a phrase, which not one of them understood. It is not very probable that Quintilian should form a less accurate judgment than Sir William Jones or Mr. Thomas Warton upon the diction of a Roman historian. For my own part I see no want either of copiousness in the narrative of Livy, or of ease in his speeches, and, like the majority of scholars, I have always been charmed with the felicity of Quintilian's description. I am not conscious of arrogance when I give myself credit for understanding it; and I believe that Quintilian intended to speak *comparatively*. Let us contrast what he says of Sallust with what he says of Livy, in the same sentence. "Neque illa Sallustiana brevitas, quâ nihil apud vacuas aures atque eruditas potest esse perfectius, apud occupatum variis cogitationibus

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"est paulo, et duriusculus, nec ubique in contextu sermonis facilis, "nec simplicitatis illius Herodoteæ satis æmulus." (See page 371 of the second volume of Warton's Poetical Works, edited by the learned Mr. Mant.)

* Vid. Dedicatio Hutteni to the Mogunt edition, Præfat. Gohorii to the Paris edition, 1573, &c. Hieronymus, in Epistola ad Paulinum, alluding to Quintilian, describes "Titum Livium "lacteæ eloquentiæ fonte manantem," and several editors of Livy quote the words of Hieronymus with approbation.

"judicem, et sæpius ineruditum, captanda nobis est: ne-
"que illa Livii lactea * ubertas satis docebit eum, qui non
"speciem expositionis, sed fidem quærit †." The lactea ubertas of Livy is indirectly compared with the Sallustiana brevitas, and each of them is represented as a model in many respects unfit for imitation to orators. This would readily be allowed of their narrative, and as to their speeches ‡, they, like others which we meet in Herodotus,

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* Homer, where his simile is drawn from honey, certainly means to suggest the idea of *sweetness* only, when he says,

"Τοῦ καὶ ἀπὸ γλώσσης μέλιτος γλυκίων ῥέεν αὐδή·"

ILIAD, I.

and thus the Latin Poets:

"Et quasi Musæo dulci contingere melle."

LUCRETIUS, lib. i.

"Fidis enim manare poetica mella
"Te solum."

HORAT. Epist. lib. i. epist. 19.

But I believe that Quintilian, in his imagery from milk, had in view copiousness. Pliny often mentions lactis ubertatem. (Lib. 20, 27, 28.)

† Lib. x. cap. 1.

‡ The most judicious and satisfactory criticisms I have ever read on the speeches written by the ancient historians, are to be found in the New Annual Register for 1783 and 1788. In the former are inserted "Observations upon the Speeches of the Ancient "historians from the Abbé de Mably's Dialogues concerning the "manner of writing History." The latter contains a very masterly "Essay on the dramatic ancient Form of Historical Composition, "from the Transactions of the Royal Edinburgh Society."

Justin in lib. xxxviii. cap. 6, gives a full, and what the critics call recta oratio; a speech of Mithridates which Pompeius Trogus had thrown into the oblique form. "Quoniam" says Justin "in "Livio et Sallustio Trogus reprehendit quod conciones directas

Thucydides, and Xenophon, were the work of the historians themselves, and however they may have delighted ancient or modern readers in the closet, they might have produced a very feeble effect upon a Greek or a Roman audience. Some light may, I think, be thrown upon the passage just now quoted from Quintilian, if we turn to another part of his Institutes, where he teaches us "qui "legendi sint incipientibus," and where, not generally, but for the particular purpose of forming a public speaker, he prefers Livy to Sallust, and Cicero to both. "Ego op- "timos quidem, et statim, et semper, sed tamen eorum "*candidissimum* quemque, et maxime expositum velim; ut "Livium a pueris, magis quam Sallustium: et hic historiæ "major est auctor: ad quem tamen intelligendum jam "profectu opus sit. Cicero, ut mihi videtur, et jucundus "incipientibus quoque, et apertus est satis; nec prodesse "tantum, sed etiam amari potest: tum (quemadmodum

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"pro sua oratione operi suo inserendo historiæ modum exceperint." Justin, it is to be observed (lib. xiv.) gives the speech of Eumenes in the form of recta oratio, and in lib. xviii. the speech of Maleus. Livy himself often gives smaller speeches in the oblique form, and especially the speeches of embassadors in lib. xxxi. par. 11. lib. xxxii. par 8. lib. xxxv. par. 35 and 42. He sometimes mixes both forms, as in the speech of Flaminius, (lib. xxxviii. par. 43.) and in the reply of Æmilius Paullus to Manlius, par. 45.

Tacitus and Cæsar often employ the oblique form. The poets mix them; of which you may see instances in the Æneid viii. 287, 293, &c. Milton's Paradise Lost, iv. 719, 724, &c. Homer's Iliad, xv. 346, 348 to 353. Apollonius Rhodius, lib. iv. 1702, 1706 to 1709.

In regard to the Roman Historians, the oblique form, when continued to any length, as it sometimes is, appears to me languid. The writer in this kind of narrative, as well as in set speeches, expresses his own thoughts, but with less perspicuity, variety, and animation, than he was enabled to do in the usual and regular form of a speech.

" Livius præcipit,) ut quisque erit Ciceroni simillimus *." Whatsoever may be the difference of opinion among modern scholars upon the justness of Quintilian's observation, little doubt upon the real import of his words can remain with any intelligent reader of the passages which I have just now produced. Whatsoever may be the comparative ease a learner would have found in understanding Cicero, and whatsoever comparative advantage he might derive from attempting to imitate him, still, as we shall see presently, Livy is represented as *miræ vir facundiæ*, still, as we have already seen, he is classed among the *candidissimos scriptores*, and still, in the judgment of Quintilian, he would have presented fewer difficulties than Sallust, to the mind of a beginner. Whatsoever may be the properties in Livy's phraseology which produced any difficulty at all, we have no clear evidence for maintaining that they consisted in Patavinity, for the diction of Sallust, to which greater obscurity is ascribed by Quintilian, was certainly free from the adhesion of foreign idiom. Whatsoever may be the merit of Sallust, and I may add Tacitus, in their style, it will hardly be denied that in copiousness, ease, and perspicuity, Livy is superior to both of them. Thus much I may venture to say, without the imputation of assenting to the harsh and acrimonious strictures, which Scioppius, in a work called Judicium de Stylo Historico, has heaped together against Sallust and Tacitus.

Before I return to the consideration of Mr. Fox's History, I shall not hesitate to drop a few words upon another passage in Quintilian, which has perplexed, rather than convinced some of my learned contemporaries. " In Tito Livio " miræ facundiæ viro putat inesse Pollio Asinius quandam " Patavinitatem †." Pollio, who was an historian as well as an orator, and whose opinions were less favourable than those of Livy to Roman liberty, might have been induced to throw out this obscure and invidious insinuation by critical refinement, or by literary jealousy, or with views of political adulation to the reigning Emperor. Quintil-

* Lib. ii. cap. 6. † Lib. viii. cap. 1.

ian, we must observe, has *recorded*, but not expressly adopted it. No ancient Grammarian, or Scholiast, or Critic, in such of their writings as have come down to us, has produced one solitary instance of Livy's Pativinity. No Philologist among the moderns, however capricious, or however fastidious, professes to have discovered one. The expression itself is not associated with our critical notions of Livy, and has answered no other purpose than that of giving rise to a contemptuous phrase for provincial barbarism, or incongruous and mongrel jargon. Morhoff* has professedly examined the opinion of Pollio, in a Dissertation which deserves the attention of every scholar. I lent it to Dr. Johnson, who agreed with me in thinking the arguments of Morhoff satisfactory, and even invincible. I know not whether some courtly historian may not hereafter arise among ourselves, and endeavour to fix upon Mr. Fox the charge of violating the English idiom. Doubtless of grammatical errors he is often guilty, and surely faults of the same kind may be found in the writings of Pope, Dryden, Addison, Swift, and sometimes even Johnson. But I very much doubt whether in Mr. Fox's History the *oculi emissitii*† of the keenest critic could discover Gallicisms, Latinisms, Archaisms, or any other Γλώττας, whether by the word we understand with Aristotle, "verba peregrina," or, with Dionysius and Galen, "verba obsoleta, ideoque inusitata et obscuriora," as distinguished from "verba peregrina‡."

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* See from page 475 to page 592 of Morhoff's Dissertationes Academicæ et Epistolicæ, published at Hamburgh, 1699. This Dissertation has been judiciously inserted by Drakenborch in the seventh volume of his edition of Livy, where any purchaser may find, and every scholar ought to read it.

† Vid. Plaut. Aulul. Act i. Scene 1.

‡ See Aristot. Rhet. lib. iii. cap. 2, and Poet. cap. 21, and Dionys. de Compos. par. 3, and Galen in Interpret. Gloss. Hippocrat.

" Omnis eloquentia," says an ancient critic, " circa opera " vitæ est, et ad se refert quisque quæ audit, et id facillime " accipiunt quod cognoscunt. *" And again he says, " habet " omnis eloquentia aliquid commune. Id imitemur quod " commune est †." Hence by common consent are allowed those liberties, of which the greatest speakers, in their common practice, readily avail themselves. Inversions, repetitions, phrases some ephemeral and others obsolete, sudden transitions, short and abrupt allusions, daring metaphors, mutilated sentences, long parentheses—all of them may have their proper place at a proper season, and may all of them be approved, if they do not occur frequently, or stand out ostentatiously. By the established laws of sympathy in the human mind, the gestures of a speaker, his tones, and his very looks may throw a lustre upon what would be obscure, and a grace upon what would be offensive, at any other time, and in any other place. But the eye will not permit us to endure what even the " judicium aurium " superbissimum ‡" has not condemned. Hence in written compositions we look, and are justified in looking, not perhaps for greater excellencies, but for fewer faults. The noble writer of an address prefixed to the History informs us, that " if Mr. Fox had ever been reduced to the alternative of " an inflated or homely phrase, he in all probability would " have preferred the latter." With sincere and just deference to the learning and taste of the excellent person whose words I have just now quoted, I must state that no man whose understanding was so cultivated as that of Mr. Fox, could often have been reduced to the *necessity* of making his choice between that which is inflated and that which is homely. In reading his history I met with several expressions, which I believe *not* " to have been introduced upon sys- " tem, but to have crept in through inadvertency," and I could point out many other passages to which my learned and noble friend would perhaps concur with me in apply-

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* Quintil. lib. viii. cap. 3. † Lib. x. cap. 2.

‡ Cicero in Orator.

ing the observation of a writer whom we equally admire: "Patet MEDIA quædam via: sicut in cultu victuque ac- "cessit aliquis citra reprehensionem nitor, quem sicut pos- "sumus adjiciamus virtutibus*." I do not profess to "take "my notion of historic style from Mr. Gibbon." But if Mr. Fox, from "his abhorrence of any thing that savoured "of pedantry or affectation," deliberately admitted into his History some very homely expressions which are now to be found in it, I should not dispute his scrupulous attention to language, but should be compelled so far "to "call in question his judgment as an author," and I should say without reserve "in vitium ducit culpæ fuga, si caret "arte."

In consequence of the censures which I heard from many quarters upon the style of Mr. Fox, I transcribed the passages which appeared to me in any degree, or upon any account objectionable; I distributed them carefully into three classes; and I added a fourth catalogue of sentences in which the position of the words is artificially inverted. For this property I was not prepared; and yet in no instance is there the smallest appearance of affectation. Every writer feels occasionally the convenience of such inversion in giving clearness and ease to the order of his words, and every good writer will have recourse to it, when it is likely to answer such useful purposes.

To chase with criticism "quod quisque unquam vel "contemptissimorum hominum dixerit, aut nimiæ miseriæ, "aut inanis jactantiæ est†." But the deserved celebrity of Mr. Fox's name, the importance of his subject, and my view of the various motives by which his readers would be disposed to condemn or to praise, increased the interest which I felt in ascertaining the real merits of his work. I was content therefore "difficiles habere nugas." I was anxious to distinguish between the just and the unjust reflections to which his history had given rise, and perhaps other

* Quintil. lib. viii. cap. 5. † Quintil. lib. i. cap. 5.

readers to whom the same " labor ineptiarum" was for the same reason less intolerable, have like myself found it agreeable to discover what it were of little use for us to communicate in detail. The real improprieties of negligence meet with fewer advocates and fewer imitators than the false beauties of affectation, and for the purposes of caution to common readers, the instances which the writer in the Edinburgh Review has enumerated in his masterly critique * upon Mr. Fox's History are quite sufficient.

Confiding in his own strength, that acute and eloquent critic will I am sure pardon me for observing that the objection which he very properly makes to Mr. Fox for writing the *then* state of Scotland, may in some respects

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* I will embrace the opportunity now afforded me for expressing not only my praise but my thanks to those unknown writers in the Edinburgh Review who have favoured the public with their remarks upon the Bill for the Residence of the Clergy, which has passed—the Bill for the Relief of the Roman Catholics, which was unfortunately rejected—and the Bill for improving the situation of Stipendiary Curates, which I hope will not be permitted again to insult the good sense of an English Parliament. Those remarks are accompanied by a train of reasoning which cannot be refuted. They are supported by facts, which every impartial ecclesiastic and every observant layman in England must acknowledge to exist. They are founded upon the most correct and enlarged principles of political economy. They are calculated to promote not only the general interests of society, but the tranquillity, honour, prosperity and safety of the Established Church. Adapted to the common sense of all readers, and justified by the experience of almost all clergymen, they may be considered as most seasonable antidotes to the contagion of that diseased spirit, which mingles the rashness of empiricism with the stubbornness of bigotry, which stoops without conscious degradation from fanatical visions to secular cares, and which, under the shelter of self-conceit and self-delusion, mistakes intolerance for zeal, officiousness for vigour, censoriousness for innocence, and singularity for evangelical holiness.

be extended to that part of the review in which we are told that "the natural tenderness of his disposition enables "him to interest us in the description of his *after* suffer- "ings." True it is that the words *before* and *after* are used as prefixes to English words, as in before-mentioned, before-time, before-hand, after-times, after-thought, after-cost, &c. &c. *Far* also, which relates to place, as *then* does to time, is prefixed, as in far-fetched; and in colloquial diction we preserve the old form which occurs in the New Testament, "a *far* country." But I suspect that the reviewer himself in an elaborate work, would not have considered the use of *before*, &c. in composition as supplying the smallest justification of such a phrase as "his *after* "sufferings." We read indeed in the New Testament, "Use a little wine for thine *often** infirmities†." Johnson too remarks that, in Sidney, *soon*‡ has the signification of an adjective, ("a *soon* and prosperous issue,") but he adds "licentiously, or according to the custom of his time;" and I should say the same of a passage which Dr. Johnson quotes from Clarendon, "the *then* Bishop of London, Dr. "Laud."

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* I am the more inclined to believe this phrase to have been suggested to our translators by the use of their own age, because they were not led to it by the original "τὰς πυκνάς σου ἀσθε- νείας." According to the genius of the Greek language, adverbs which relate to time are preceded by an article, precisely similar to the phrase in Mr. Fox's History. "Ὦ τέκνα, Κάδμε τὸ "πάλαι νέα τροφὴ." (Sophocl. in Œd. Tyr.) "Οὐδὲν δίκαιόν "ἐστιν ἐν τῷ νῦν γένει." (Euripid. in Temeno, not Tenne. See Valkenaer, Diatribe 15.) "Οὐ γὰρ ἴστε οὐδὲ ἐγγὺς Ἀθεναίων "ἡ τότε πολιτεία." (Luciani Imagines, sect. 17.)

† 1 Tim. v. 23.

‡ Taylor in his Advent Sermon writes "a *seldomer* preach- "ing," and "*seldome* returns."

Let not the excellent critic to whom I have adverted be offended with me for observing, that he has himself fallen into a colloquial inaccuracy, equal to that which he justly blames in Mr. Fox. Dr. Johnson is said to have reprimanded very roughly one of his friends who in conversation had expressed a wish to "*canvass* that subject," but Johnson had forgotten that in The Vanity of Human Wishes he had himself written, "Search every state, and "*canvass* every prayer*." Harry Stephens collected with great anxiety, and produced with great triumph, many instances in which Dionysius Halicarnassensis used the very expressions which he had condemned in Thucydides, and with some probability Stephens conjectures that when the judgment of Dionysius was matured, and when he was preparing to write an historical work, he often approved of that phraseology which in the ardour of youth and the petulance of criticism he had before censured†. It is well known to scholars that Moeris, Thomas Magister, Phrynichus, and other grammarians have often reprobated such words as the most approved writers have employed‡. The author of a very entertaining and very instructive work, called Solœcista, and ascribed, but with little probability,

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* I know not a more striking instance of forgetfulness than that which Quintilian records: "Didymo, quo nemo plura scripsit, "accidisse compertum est, ut cum historiæ cuidam tanquam vanæ "repugnaret, ipsius proferretur liber, qui eam continebat." (lib. i. cap. 5.)

† The remarks of Harry Stephens upon Dion. Hal. are inserted together with his preface to Thucydides, and his letter to Camerarius, in Duker's edition of Thucyd.

‡ I hope not to be accused of pedantry for supporting my assertion by a few instances. Vide Moeris on προσβαίνειν, which is really an Attic word, as distinguished from ἀναῤῥιχᾶσθαι—T. Magister in voce Δρεπάνη—and Phrynichus in ἴγδιν (which is an older and better reading than ἴχδην) which he rejects, when he prefers Θυείαν.

to Lucian, has pointed his ridicule against many expressions which occur in the best authors. It has sometimes been my own lot, as a writer, to violate the rules which, as a teacher, I had prescribed to learners, and perhaps there is no man of letters who may not find reason now and then to apply gravely to himself the following question: "Ἀράγε "ὁ γνῶναι τον σολοικίζοντα δεινὸς, ἔτος καὶ φυλάξασθαι μὴ "σολοικίζειν δυνατός;*"

Mr. Fox's History after all is an "ὀλίγη λιβὰς," and though it cannot be said always "καθαρή τε καὶ ἀχράαν- "τος ἀνέρπειν," it must be allowed by every candid critic to flow "πίδακος ἐξ ἱερῆς †." I know not whether in the progress of his work Mr. Fox would have employed that kind of reasoning which "unfolds a general view of the "causes that influence the character and disposition of the "people at large," and which in the opinion of the Reviewer and my own are "essential to the true perfection "of history;" but, if I mistake not, the understanding of Mr. Fox was thoroughly qualified for such investigations, and his work even now is "more full of argument, and "what is properly called reflection, than most modern "historians with whom I am acquainted ‡."

The observations strewed by Mr. Fox over his work recal to my mind Addison's description of fine writing. They are natural without being obvious. They by accident rather than design, exhibit the peculiar§ and amiable cha-

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* Luciani Solœcista sect. 1. † Callimachi Hymn. in Apoll.

‡ See Edinburgh Review.

§ In the pathetic close of the narrative which Mr. Fox has given us of Argyle's death, there are certain φωνᾶντα συνετοῖσι which may lead us to suspect that he, at the moment, had in view the possibility of a similar fate to himself, if he ever should be placed in similar circumstances. Reflection, habit, principle, sensibility, all the pure and all the noble qualities of nature acted in

racter of the writer, They grow out of the subject, and "to every seed" of morality or policy which is "sown" in the narrative they give as it were "its own body." In truth, this History may be compared to a country in which the beauties that diversify the scenery bear no resemblance to the profusion and gaudiness which betray the solicitude of art, but are the native and spontaneous produce of the soil, diffuse a fragrance which refreshes the senses without overpowering them, and are decked with colours, sometimes mellow but without faintness, and sometimes glowing but without glare.

Do we not sympathise with Dr. Johnson when he tells us that the English Dictionary was "written, not in the "soft obscurities of retirement, or under the shelter of "academic bowers, but amidst inconvenience and distraction, "in sickness and in sorrow?" Why then should we not do Mr. Fox that justice which the best feelings of our heart

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mild and sweet concert upon the mind of the writer, and they awake in the reader every tender and every generous sympathy of pity for ideal suffering, and reverence for real virtue. Of the interest created in men of genius by these imaginary situations, when self-love and self-respect recommend themselves by attendant simplicity and sincerity, we have a striking instance in a very eloquent passage, where Bishop Warburton describes Mr. Bayle as "a man who, to the utmost strength and clearness of reasoning, has "added all the liveliness and delicacy of wit, and who, pervading "human nature at ease, struck into the province of paradox, as an "exercise for the unwearied vigour of his mind." He who thus writes of other men must have experienced in himself something similar to that property which he describes. When the pen of Warburton was employed upon a passage, where so much originality is united with such vigour in the conception, and so much ease with such dignity in the language, a *vox intus* must have whispered to him again and again

"Mutato nomine de *me*
"Fabula narratur."

will not permit us to refuse to Dr. Johnson? Mr. Fox's History was composed amidst many interruptions from the difficulty of procuring authentic papers, from the tardy and irksome operations of the mind, when it has to methodise and qualify probable conjectures, in opposition to long received but unfounded assertions, from the toil of elucidating obscure or comparing contradictory statements, from the bustle of party, from the fatigues of office, from the languor of approaching disease, and from those sweet endearments which he found in the society of a beloved family, and long-tried friends, and which to such a man were far more interesting than the prospect of posthumous fame.

Really and professedly the work of Mr. Fox is "incomplete and unfinished*." But whatever may be for a time the success of criticism in the attempts that have been made to depreciate the merit of it, the season is not distant when the writer, if he were living, might exclaim with a well-known poet of antiquity,

"ἀλλά—
"πιστός εἰμι φελλὸς ὡς
"ὑπὲρ ἕρκος ἅλμας †."

Though objections may be raised against the disposition of the parts, the work will still be entitled to the name of a history ‡. We know that Dionysius in his letter to Pompey "περὶ Πλάτωνος" has with great severity cri-

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* See Lord Holland's Preface. † Pindar. Pyth. 2.

‡ "τῶν συγγραμμάτων, ὅσα μὲν ἂν ἢ κατὰ τὴν λέξιν, "ἢ κατὰ τὸν χειρισμὸν, ἢ κατ' ἄλλο τι διαμαρτάνηται τῶν "ἰδίων μερῶν, ἀντεχήται δὲ τῆς ἀληθείας, προσίεσθαι φησὶ τὸ "της ἱστορίας ὄνομα τὰς βίβλους· ὅταν δὲ ταύτης παραπέσῃ, "μηκέτι καλεῖσθαι δεῖν ἱστορίαν."

Polyb. Megal. Hist. lib. xii. sect. 5.

ticised Thucydides in his choice of a "ὑποθεσις" which is neither "καλὴ" nor "κεχαρισμένη," in his comparative ignorance "πόθεν τε ἄρξασθαι καὶ μέχρι τοῦ προελθεῖν δεῖ "—τίνα δεῖ παραλαβεῖν—διελέσθαι τε καὶ τάξαι τῶν δη- "λωμένων ἕκαστον ἐν ᾧ δεῖ τόπῳ," and in that diathesis of the writer himself which is "ἀυθέκαστος καὶ πικρὰ, καὶ τῇ "πατρίδι τῆς φυγῆς μνησικακοῦσα." In all these respects he decidedly prefers Herodotus to Thucydides, and yet another Greek writer, who in learning and talents was not inferior to Dionysius, composed a well-known work "περὶ "τῆς Ἡρόδοτου κακοηθείας." Modern scholars read with attention the censures both of Dionysius and Plutarch, but they do not read with less attention, with less profit, or less delight the works of Herodotus and Thucydides themselves. The secret charm, which acts upon the readers of Mr. Fox's History, and which ultimately will preserve the fame of it from the attacks of criticism, is to be found in his unfeigned and unceasing regard to truth. He is equally exempt from that deliberate falsehood which is utterly inexcusable, and from that ignorance of truth which a great historian of antiquity allows in some cases to be venial*. In the statement, and, where it was possible, the solution of doubtful evidence, in developing the properties of actions and the characters of agents, in applying to the dark and crooked machinations of human policy those simple but hallowed rules of morality, which our unprejudiced judgments, and our uncorrupted feelings invariably approve, Mr. Fox has discharged his trust with such ability as rarely has been equalled, and such fidelity as never has been surpassed. He has rescued his readers from those delusions

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* "Δύο μὲν τρόπους φαμὲν εἶναι ψεύδους· ἕνα μὲν τὸν "κατ' ἄγνοιαν, ἕτερον δὲ κατὰ προαίρεσιν, καὶ τούτων δεῖν "τοῖς μὲν κατ' ἄγνοιαν παρακαίεσι τῆς ἀληθείας, διδόναι συγ- "γνώμην· τοῖς δὲ κατὰ προαίρεσιν, ἀκαταλλάκτως ἔχειν."

Polyb. Megal. Hist. lib. xii. sect. 5.

to which they were exposed from the blunders of Dalrymple, the calumnies of Macpherson, the partial decisions, the disingenuous omissions, and the captivating but sometimes unauthorised discussions of Mr. Hume. In telling the story of the times of which he treats, he distinctly and fully lays open to our view the servility and profligacy of English ministers, the want of foresight, and want of moderation in many of our English ecclesiastics, and the meanness, insincerity, insatiable ambition, and odious cruelties of two royal oppressors.

The conductors of the British Critic professedly decline giving "their opinion of the genius of Mr. Fox for his-"toric composition." They grant that "if age had mode-"rated that sanguine temperament which made him hunt "after extremes in facts and in principles, there is enough "in his work to show that he might have become a fine "historian." They represent what they think "the wrong "placing of some parts of his history, and the great dis-"proportion of others, as being only offences against the "mechanical laws of composition, and, as such, easily "avoided." They speak of "numerous admirers, who "firmly believe that every thing which was the product "of his pen, must have been a faultless model of excel-"lence in its kind." "Id quia volunt credunt quoque*" may be true of many readers, and possible it is that the acknowledgments which I have made upon the imperfections of Mr. Fox's style may not expiate my guilt in praising it, nor protect me from being classed with the herd of blind and abject idolators. But I should beg leave to remind my accusers that in our own country, and our own times, there is another class of men, who are equally numerous, and equally clamorous with the panegyrists of Mr. Fox, and who would be eager to depreciate every excellence, and exaggerate every defect that can be found in him, as a statesman, a speaker, a writer, and a man.

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* Quintil. lib. vi. cap. 2.

The conductors of the British Critic controvert the conclusions which Mr. Fox has drawn from Barillon's correspondence. They peremptorily deny that James had applied for, and Louis XIV. promised him his aid to reduce England to an absolute monarchy, so far as that point could be established by the papers of Barillon. They maintain that "however the general tenor of the "papers of Barillon gave a semblance of probability to "Mr. Fox's opinion that James pursued the general es- "tablishment of the faith of the Roman church in these "kingdoms with a zeal less ardent than that which actu- "ated him in his plan to establish absolute monarchy, "yet it can be shown, upon the authority of James him- "self, that his overweening confidence in the infallibility "of the reasons producing his own religious conviction "led him into the most singular of errors: that of sup- "posing that the admission of a toleration must of ne- "cessity be ultimately followed by the conversion of the "whole body of people to Romanism." Here a wide field for discussion opens itself to any disputant, who might be more disposed than I am to examine the soundness of the Reviewer's arguments, and the tendency of his positions. He might say that Mr. Fox cannot be blamed for not qualifying his opinions by the evidence of papers which he had *never* read—that according to the Reviewer's own concession "those opinions have a semblance of being "founded on the general tenor of Barillon's papers," which Mr. Fox *had* read—that the projects, which James in his old age and in exile had prepared for the instruction of his son, and, as he imagined, his successor, are not direct and decisive proofs of the objects which he pursued while he was on the throne—that from change in external circumstances, his primary view of altering the government might have become secondary, and his once secondary view of subverting the English church might have become primary—that the attainment of this end might in his estimation be a powerful mean for the speedier and fuller attainment of another end—that men sometimes do not see distinctly, and sometimes will not acknowledge ingenuously, the motives by which they are really actuated—

that James might display his piety for the very purpose of concealing his ambition—that to profess his design of introducing a new, and, as he believed, a true religion, would be meritorious—that to proclaim any ulterior design of destroying totally the liberties of a people would have been unsafe—that a professed zealot readily excuses, and even applauds himself, but that an oppressor in exile does not openly invite advocates or auxiliaries, while he has not the power of crushing the refractory, and rewarding the obsequious.

My esteem for some ingenious and learned men, who are known to write in the British Critic, prevents me from stating many of the objections which their remarks have suggested to me. Let me rather perform the less ungracious task of allowing their diligence in examining Barillon's papers, of congratulating their good fortune in having once had access to an important manuscript which no longer exists, and of commending their zeal and fidelity in communicating its substance to an inquisitive and impartial public. The analysis which they took of that document in 1777 convinces me that the prejudices of James were unsubdued by the discipline of experience, and that the leisure afforded to him by long and inglorious banishment was employed in maturing that system which he had formed imperfectly before his accession to the throne, and which he had pursued with a strange mixture of cunning and rashness, imbecility and violence before his abdication. It shows his folly in considering it as certain that if a toleration were to be established, the people, whom he had provoked by his undisguised attachment to what he conceived the true religion, would in time be won over to it by the establishment of a toleration—his inconsistency, in regarding the bulk of that "very people as too enlightened "to put themselves into that situation without a force "which could oblige them to it"—his arrogance in holding that "the king should always be in such a state that sub-"jects should always look up to him with obligation for "not violating their privileges"—his hypocrisy in decoying the members of a Protestant church and Protestant Dissenters to become instruments of introducing a religion,

which they disbelieved, dreaded, and then detested—his subtlety, in assigning to them military employments for the purpose of counteracting their political principles—and his unalterable determination "to be satisfied only "with such a share of power as would have placed abso-"lute authority too nearly within his own reach," and so to alter our modified monarchy that, in the hands of a skilful and vigorous successor, animated by a father's example, and needing not his wariness, it might have been speedily converted into a despotism. If desires thus unconstitutional were the principle and main spring of his plan of government, the monarchy of England would by his success have been instantly "assimilated to that of "France," and as the country would have had no security against a farther increase of physical strength in the Crown, it must in a short time have resembled despotism in appearance, and approached it in reality. In the indulgence of ambition, as of every other inordinate passion, when the opportunity and the means are within the reach of such a being as man, in such a situation as royalty

"nemo
"Peccandi finem posuit sibi *."

Under every possible aspect of the question, and with every probable calculation upon the evidence, the reign of James II. supplies the most instructive lesson to subjects of every class, and to protestants of every denomination. If Barillon's correspondence proves no more than some respectable critics of our own age allow to be proved by it, the king's own papers, as lately produced by those very critics, contain enough to justify our fixed disapprobation, and unbounded fears. If Mr. Fox be right, as I believe him to be, in the order† which he assigns to the intentions of James,

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* Juv. Sat. 13.

† A kind of side light is thrown upon the real views, or at least the real character of James II. by his conduct to the inhabit-

the church must have fallen an easy prey to the zeal of the King, when his love of arbitrary sway had been gratified by

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ants of Maryland. The settlement of that colony was made under the auspices of Lord Baltimore, by his brother, and about two hundred persons, Roman Catholics, and most of them of good families. "The free toleration" which his Lordship allowed, "for "all who professed the Christian religion, of whatever denomi- "nation, and which was never in the least instance violated, en- "couraged a great number, not only of the Church of England, "but of Presbyterians, Quakers, and all kinds of Dissenters, to "settle in Maryland, which before that was almost wholly in the "hands of the Catholics. Lord Baltimore, though guilty of no mal- "administration in his government, though a zealous Roman Ca- "tholic, and firmly attached to the cause of king James the Second, "could not prevent his charter from being questioned in that arbi- "trary reign, and a suit from being commenced to deprive him "of the property and jurisdiction of a province granted by the royal "favour, and peopled at such a vast expence of his own. But it "was the error of that weak and unfortunate reign, neither to "know its friends nor its enemies; but, by a blind precipitate "conduct, to hurry on every thing, of whatever consequence, "with almost equal heat, and to imagine that the sound of the "royal authority was sufficient to justify every sort of conduct, "to every sort of people. But these injuries could not shake the "honour and constancy of Lord Baltimore, nor tempt him to de- "sert the cause of his master. Upon the revolution he had no "reason to expect any favour; yet he met with more than king "James had intended him; he was deprived, indeed, of all his "jurisdiction, but he was left the profits of his province, which "were by no means inconsiderable." (European Settlements, vol. ii. page 230.) Lord Baltimore, though a sincere and even a persecuted Papist, was capable of tolerating Protestants. James the Second, though he loved popery very well, appears to have loved despotic power much better. William the Third was favourable to the cause of protestantism in every part of the world. He restrained the power of the Roman Catholics in Maryland, where, under a proprietor less enlightened or less generous than Lord

his victory over the state. If Mr. Fox be wrong, the church would have been sacrificed as the first victim, and from the co-operation of religious fervour with political attachment in a people newly converted, the triumph of James over our civil liberties must soon have followed. If the enactment of the habeas corpus act was disagreeable to the King, when he reflected upon it in his retirement, because, as he *then* conceived, it rendered a standing army necessary, we can hardly suspect him of any permanent reluctance to yield to such necessity, while he wielded the sceptre*. But if the act had been repealed, when the King had a standing army at his command, the liberty of the subject

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Baltimore, it might have been abused to the annoyance of the new settlers. But he forgave the opposition of Lord Baltimore, and his Roman Catholic adherents, he respected their property, he tolerated their religion, he set an example of wisdom and justice, which in a short time his American subjects were graceless enough not to follow, for "upon the revolution, when power had changed "hands in the province, the new men made but an indifferent "requital for the liberties and indulgences they had enjoyed under "the old administration, deprived the Catholics of all the rights "of freemen, adopted the whole body of the penal laws of England "against them, and would, in all probability, have gone to the "greatest lengths in the same spirit, if the moderation and good "sense of the government of England had not set some bounds "to their bigotry." (European Settlements, vol. ii. p. 231.)

* In point of fact "he told the two houses, that the militia "in which the nation trusted, having been found, during the late "rebellion, altogether insufficient for the safety of government, "he had encreased the regular forces to double of their former "number: and demanded a fresh supply for the support of this "additional force." (See Russell's Mod. Hist. vol. iii. page 457.) The King, who had doubled his army, under the plea of a rebellion already subdued, would not have been very scrupulous about encreasing it, if his subjects had continued their opposition to the establishment of popery, and the extension of Royal Prerogative.

would have been deprived of its best security at a crisis the most formidable, and under a monarch who looked upon every accession of strength to his subjects, as an obstacle to his own pursuits, and an encroachment upon his own claims. If the project for toleration had been so far carried into execution by lenient measures as to make way for the establishment of Popery, the loyal ecclesiastics who had extolled passive obedience would have been deceived and degraded. But if stronger measures had been requisite to give effect to such a scheme of toleration, leading to such consequences, the judicial campaign of Jefferies, and the military massacres of Kirk may teach us what was to have been expected from the equity of judges, the tenderness of soldiers, and the clemency of a king, visionary without genius, precipitate without courage, emboldened by partial success, irritated by partial resistance, besotted by the spells of superstition, and depraved by the lust of domination. Contemplating the awful reverses of fortune, the detections of artifice, and the defeats of outrage, which the history of James presents to us, while we condemn the tyranny of his actions, we may give him credit for the sincerity of his faith—we may pity what we may suppose to be his religious mistakes—we may make some allowances for his political prejudices—but, as consistent churchmen, and as free-born Englishmen, we ought to bear in mind the mischiefs which must have flowed from those mistakes and those prejudices, if our forefathers had not delivered themselves and their posterity by a well-timed and well-conducted revolution.

The bishops, I grant, did well in preferring the church to the monarchy, when they were compelled to make their choice, and I farther grant that they are not to be accused of inconsistency, because they never defended such temporal power in the King as in their judgment would have enabled or authorized him to overturn our ecclesiastical establishment. It must however be acknowledged that an earlier discovery of the dangers which were gathering round them would have done honour to their sagacity, and preserved them from many rash professions, and many perilous compliances. It can hardly be denied too that the events which

gave rise to the bill of exclusion in a former reign *, and the disputes which followed it, were sufficient to justify a little more caution, and a little more steadiness than were manifested by some of our prelates, or by the university of Oxford. Warned by the example of their forefathers, the ecclesiastics of these days may learn to stand aloof from the first approach to extremes of any kind, to distrust the specious promises of zealots, or bigots, or hypocrites "aras et "sceptra tueri," and to meditate upon the latent but powerful causes by which "ambitio malesuada ruit †." Ways

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* I mean that of Charles II. The attachment of ecclesiastics to Charles I. is more excusable, for he firmly supported the English Church. "The court of Rome, by its agents the Jesuits, endea- "voured in the first instance to gain the king and his party, and "by their means to crush the Puritans. When the steadiness of "the King to the Church of England disappointed them of this "object, they turned against him, and were accomplices in his "ruin." (Symmons's Life of Milton, p. 186.) At this distance of time it must appear strange to us that they who remembered the constancy and fidelity of the father in his opposition to the church of Rome, did not take an *earlier* alarm at the designs of the son in favour of that church. Their judgment perhaps was blinded by their favourite doctrine of non-resistance, and their inveterate hatred of the Puritans.

† These were the two mottoes on medals that were struck after the execution of Monmouth. We shall readily allow that unfortunate nobleman to have been a rebel. But what name shall we assign to the sovereign who put Monmouth to death without the formality of a trial, suffered Mrs. Gaunt to be burned alive for her charity to the wretch that betrayed her, and resisted all applications for the pardon of Lady Lisle, though "it was well "known that her heart had ever been loyal," and that her son, by her commands, had been "sent to fight against the rebels whom "she was accused of harbouring?" James, it seems, excused himself by the promise he had made to Jefferies not to pardon the unfortunate lady. But was this king, who in the beginning of his

without timidity, and firm without obstinacy, they will sometimes infer the tendency of measures from the characters of men. Collecting principles from observation upon past events, they will ascertain the true value of precedents, as applicable to the present state of public affairs—they will learn not only to reverence and support the legitimate prerogative of the crown as inseparable from the real interests of the church, but to confide in it as amply sufficient to protect them, while it is neither violently enlarged, nor insidiously contracted—they will never prostitute learning in the service of adulation, never sacrifice religion to worldly policy, never violate their own trust, nor endanger their own welfare by contending for more or approving of less than the constitutional rights of the throne. *Such* an Alliance between Church and State is very intelligible and very important—it is compatible with the just pretensions of both—it is adapted to the proper uses of both—and, when accompanied by a spirit of moderation in the priesthood, and of patriotism in the sovereign, most conducive will it

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reign "passed for a man of great sincerity and great honour," equally attentive to another promise which he had given before the privy council, and repeated in the discourse which he afterwards made to his parliament—the promise of governing according to the laws, and of preserving the established religion? When James, upon his accession to the throne, professed before the privy council his "resolution to maintain the established government, both in "church and state," what was the language of his courtiers? "We "have now the word of a king, and a word never yet broken." But he soon did break it, for the whole of his short reign, as Mr. Hume allows, consisted of attempts always imprudent, often illegal, sometimes both, against whatever was most loved and revered by the nation. Whatever extenuations may be urged for his exercise of the dispensing power, other parts of his conduct can never be vindicated by "reasoning founded on such principles "as are usually admitted by lawyers." (See Hume v. last. p. 247, edit. 1782.)

ever be to the stability of the government, and the happiness of the community.

Experience has shown the impolicy of Star-chambers and Inquisitions. Governments have now the evidence of facts to justify them in stretching forth the arm of their protection, and in doling out something more than the usual pittance, even of their favour * to all persons who, "calling "and professing themselves Christians," have the testimony of their own conscience for having been "guided in the "way of truth." But the spirit, which so often disguises, from ourselves and from other men, the deceitfulness and malignity of persecution, has been convicted of equal hostility to the moral and intellectual improvement of the human species, to the comfort of individuals, and the harmony of society, to the dictates of sound philosophy and the precepts of pure religion.

As to religious liberty, it was rather the slow effect of our reformation than the professed ground upon which our reformers acted, even while the principle of it was virtually assumed in their actions, and when the struggles of religious sects, newly awakened to a sense of their rights, had stirred up erroneous and extravagant notions upon the degree to which those rights were to be extended. The arguments, employed in opposition to them, gradually brought the fundamental truths, upon which toleration is rested, more nearly and more distinctly within the view of the most temperate opponents to the church of Rome. Our knowledge upon the subject is now increased, our passions have very much cooled, and, at this distance of time, when a man, whether Protestant or Romanist, looks back to the violences into which all parties were precipitated, upon our first sepa-

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* Of such favour, as far as it has been asked by the great body of Roman Catholics, and might, in my opinion, be safely granted by Protestants, I should say with old Hesiod,

"πλείη δὲ χάρις δαπάνη τ' ὀλιγίη."

Op. & Dies. v. 723.

ration, the history of that tumultuous age will give him too much reason to exclaim " Iliacos intra muros peccatur, et " extra *."

Among the numerous blessings for which we are indebted to the accession of William III. let it not be forgotten that the genuine principles of *religious* freedom have been more diligently examined, and more widely disseminated. The light of knowledge has restored to their native comeliness and brightness many truths which, viewed as they once were, in the faint twilight of uncertainty, or through the cloudy medium of controversy, had assumed shapes and colours not really belonging to them; and even from error it has cleared away many imaginary deformities, which in seasons of turbulent or partial discussion had disgusted the pious and alarmed the contentious. In the present condition of the world, that restless and relentless temper, which once actuated the members of the church of Rome, is visibly assuaged, a spirit of inquiry has imperceptibly in speculative points produced a spirit of moderation, and few, if any, of the practical mischiefs which Popery might formerly have

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* Warburton describes the infirmities of the first reformers in the most animated language. " The spirit of persecution has a " marvellous malignity in its nature: so that when every other ini- " quity of papal power had now been detected and expelled, this " still stuck behind.

" There is scarce a material error in the Church of Rome, " which doth not sooth or cherish some of our corrupt passions and " prejudices. But persecution flatters them all. It flatters our " spiritual pride, the vanity of superior knowledge, and a purer " faith. It confirms our bigotry, the mistaken zeal for the honour " of God and holy Church; and it supports our ambition, the " itch for mastery and misrule. Were it not for so powerful a " bias, this iniquity which had most imbittered the thraldom of our " first reformers, and kept them longest in their chains, must on " their first deliverance have been immediately detected, and " marked out for execration."

Warburton's Discourses on Church Authority.

brought down upon us, are any longer to be dreaded in our own country. Even those few may be ascertained by amicable discussion, and averted by sound discretion. Gladly, therefore, should I hail the day, in which the religious tenets of the Roman Catholics should not be permitted to obstruct the full recovery of their civil rights, and in which the church of England, providing at once for its own interest and its own honour, should display to every other church in Christendom a glorious example of "holding "the faith in unity of spirit and the bond of peace."

For my part, though it may be my lot to differ from the church of Rome in several doctrinal points more widely than some of its fiercest opponents, I shall always think it unworthy of me, as an Englishman and a Protestant, to treat the members of that church as incorrigible outcasts from civil society, and stubborn apostates from all religious truth. I shall never cease to explore the good as well as the bad effects of the Papal power in ages* when the rude barbarism and military ferocity of European nations seem to have been checked by no restraints more efficacious than that power, so far as history has set before us the order of events, or the operation of causes. I shall always remember that by the monastic institutions were preserved to us the means of acquiring that knowledge which co-operating sometimes from accident, and sometimes from design, with other circumstances, has enabled men in all countries, whether Catholic or Protestant, to become progressive in the better use of their faculties, and the better discharge of their duties. I shall always look back with

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* After writing this sentence I had the satisfaction to find that Mr. Gibbon was of the same opinion. "The authority of "the priests operated," says he, "as a salutary antidote. They pre- "vented the total extinction of letters, mitigated the fierceness of "the times, sheltered the poor and defenceless, and preserved or "revived the peace and order of civil society. But the indepen- "dence, rapine and discord of the feudal lords were unmixed with "any semblance of good." (ch. 61.)

triumph upon the contributions which foreign Catholics have made to the arts, to science, and to every branch of polite learning, whether ancient or modern. I should often remind my countrymen, that English poetry, and the English language have been enriched by a Dryden and a Pope, who, if they had lived in our own days, and had ceased to "be "fined and taxed for" their notions of "hereditary right," might yet have complained, like other "sufferers," of "cer- "tain laws," which continued to deny many "posts of profit "and trust*" to the Catholics, on account of their religious opinions alone.

Attending to history not less than theological controversy, I shall always bear in mind "that however at the "æra of the Crusades the Latins of Europe were below "the Greeks and Arabians in learning, industry and art, "their successive improvements and present superiority "may be ascribed to a peculiar energy of character, to an "active and imitative spirit unknown to their more po- "lished rivals†"—"that the Greeks were stationary and "retrograde, while the Latins were advancing with a rapid "and progressive motion ‡"—"that the character of the "man prevailed over the interest of the Pope in Nicholas "V. who was the friend and patron of the most eminent "scholars of his age §"—"that Florence, and the rest of "Italy were actuated by a similar spirit"—that Grocyn, Linacer, and Latimer, who introduced the knowledge of the Greek language into the University of Oxford, had previously acquired their own knowledge of it in the Papal dominions—that in those dominions the learned Greek refugees from Constantinople met with protection and encouragement—that Leo X. and other Popes were the munificent patrons of scholars—and that even in our own times the contents of manuscripts, treasured in the libraries of Roman Catholics, have been freely communicated for the

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* See Pope's Imitation of Horace's Second Epistle, book 2.

† Gibbon, chap. 61. ‡ Ch. 66. § Ch. 66.

use of two learned English Protestants in their meritorious labours on the text of the Hebrew Scriptures and the Septuagint.

Knowing that mixture of wisdom and folly, good and evil, which pervades the intellectual and moral world—disapproving, in some respects, the use of images in the church of Rome; and yet looking to the collateral effects of it on those elegant or useful arts which flourish in civilized life; I shall always avow my assent to the remarks of a judicious traveller, who tells us that "from the con-"troversies of the Greeks about abstruse and mystical "questions, the personal interference of their Emperor in "ecclesiastical affairs, and the indiscriminate rage of the "Iconoclasts, who in the eighth century had destroyed, "not only the remaining statues of classical antiquity, "but those of the ruder ages found in churches, we may "account for the decline and fall of the arts in Greece—"that if, upon the removal of those arts to Rome, the "dogmas of the Catholic religion had been equally adverse "to them, the same neglect and subversion must have "happened—but that, in the western division of the church, "the crowded niches evince the veneration in which sta-"tuary was there holden, while the art itself was con-"sidered as unholy in Greece, and no encouragement was "given to the artist*."

I shall always reflect with pleasure upon the agreeable and useful qualities, the manners and accomplishments, the solid virtues and exemplary devotion of many individuals of the Catholic persuasion with whom it is my good fortune to be personally acquainted. I shall always honour the self-denial, and commiserate the sufferings both of them and their forefathers, because I know that neither hope nor fear, neither ambition nor avarice, neither the experience nor the expectation of unmerited severities, has shaken their firmness in adhering to opinions which are not my own. I shall always be ready to confess that accord-

* Dallaway's History of Constantinople, p. 409.

ing to my views of human nature, the tares of error are seldom rooted up rudely without disturbing the wholesome seeds of truths, that the downfall of superstition is not invariably followed by the empire of reason, and that in the present state of things the sudden, violent and entire destruction of the Papal power might lead to consequences most injurious to the good morals of those persons who are now accustomed to obey the Bishop of Rome as their spiritual head only. I shall always maintain openly and unequivocally that, in far the greater part of those doctrines which the church of England has classed among the essential truths of Christianity, the church of Rome has long professed, and continues to profess the same belief*. I shall always acknowledge with gratitude that chiefly to the literary as well as the religious zeal of out papal ancestors, the English Universities are indebted for "great and goodly "cities, which we builded not; for houses full of all good "things, which we filled not; for vineyards and olive trees, "which we planted not†;" for statutes and ordinances which, after the lapse of centuries, and after a succession of mighty changes, both in private and public life, have not ceased to be profitable to learning, morals and piety;

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* "If mere dissent from the church of Rome be a merit, he "that dissents the most perfectly is the most meritorious. In many "points we hold *strongly* with that church. He that dissents "throughout with that church will dissent with the church of "England, and then it will be a part of his merit that he dissents "with ourselves:—a whimsical species of merit for any set of "men to establish." (Burke's Letter to Sir H. Langrishe.) "There never has been a religion of the state (the few years of "the parliament only excepted) but that of *the episcopal church of "England;* the episcopal church of England, before the reformation "connected with the see of Rome, since then disconnected, and pro- "testing against some of her doctrines, and against the whole of "her authority, as binding in our national church." (Ibid.)

† Deut. vi.

and for means most abundant and most efficacious to guide, assist and encourage our rising youth in every pursuit which adorns and invigorates the human mind. When we "have eaten and are full, then let us beware lest we for-"get" the wisdom, munificence, and generosity of those founders, who "brought us forth out of the land of Egyp-"tian darkness, and from the house of intellectual bond-"age."

"And now if men will say, I persuade to indifferency, "there is no help for me, for" in condemning James II. "I have given reasons against it; I must bear it as well as "I can; I am not yet without remedy as they are, for "patience will help me—let them take their course, and "I'll take mine—Only I will take leave to consider this "(and they would do well to do so too) that unless Faith "be kept within its own latitude, and not called out to "patrocinate every less necessary opinion, and the interest "of every sect, or peevish person; and if damnation be pro-"nounced against Christians believing the Creed, and liv-"ing good lives, because they are deceived, or are said to "be deceived in some opinions less necessary, there is no "way in the world to satisfy unlearned persons in the "choice of their religion, or to appease the unquietness of "a scrupulous conscience *." †

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* Dedication to Bishop Taylor's Liberty of Prophecying.

† Mr. Gibbon, suo *more* et modo, observes, "I am sorry to "say that the three writers of the last age by whom the rights "of toleration were so nobly defended, Bayle, Leibnitz, and Locke, "are all laymen and philosophers." (Vol. v. cap. 54.) In my turn I am glad to observe that, not long before the same time, the same rights were nearly with the same ability defended by Jeremy Taylor, an ecclesiastic, a scholar, and a man of genius, who "preserved the substance with the name of religion," and who exercised the "freedom" while he cherished the "temper" of true "philosophy."

Mr. Fox, in page 154 of his History, has made some judicious observations upon the character of a party, which he describes not only as powerful in the time of Charles and James, but as by no means inconsiderable during the reign of the two first princes of the House of Brunswick, when it was lowest. Doubtless by a deplorable but not unaccountable fatality, many persons whose sincerity, as guardians of the church, is more indisputable than their judgment, retained a strong affection to the Stuart family when in exile, and in the abundance of their aversion to Protestant Dissenters, and ecclesiastical latitudinarians, they became less vigilant against the greater dangers to which the restoration of that family, and the invincible but not dishonourable attachment of it to the church of Rome might have exposed the established religion of this country. Their political zeal may be imputed to the known difference of opinion between themselves and their opponents upon the obedience due to sovereigns, and it is somewhat remarkable that their speculative notions upon non-resistance gave a secret bias to their minds in favour of that very cause which must have owed its success practically to the most open resistance to the reigning monarch. Their religious zeal may in part be imputed to some recent controversies upon the Trinity, the Test, and other topics, which naturally and deservedly attract the notice of ecclesiastics. But the rebellions of 1715 and 1745 raised the greatest alarm about Popery, and the effects of that alarm were yet more visible in the low church party, about whom Mr. Fox is silent, than in the high party, whom he has noticed. The former, consistently enough, were anxious to provide for the security both of our civil and religious rights. The latter, upon the arrival of mischief, would have been faithful to our religious rights, though for the preservation of our civil liberty they neither felt nor professed to feel much solicitude. But in the fear and the hatred of Popery the champions of civil liberty were, I say not more sincere, but more active and more conspicuous, and so it happened that, even when the spirit of the

monarch then on the throne was favourable to the general cause of toleration, the low church party multiplied distinctions and exceptions to the prejudices of those fellow-subjects who adhered to the church of Rome. Bishop Hoadley considered The Measures of Submission to the Civil Magistrate, discussed the Original and Institution of Civil Government, wrote many argumentative tracts in the Bangorian controvery, and therefore found it impossible to soften the resentment of his ecclesiastical brethren by a very elaborate Treatise on the Reasonableness of Conformity to the Church of England. But his fears and antipathies towards the Church of Rome are manifest in the masterly dedication which he addressed to Pope Clement XI. which was at first prefixed to Steele's Account of the State of the Roman Catholic Religion throughout the World, and has since been published in the second volume of the Bishop's works. Warburton, however offensive some of his writings may be from a spirit of dogmatism, certainly was not an intolerant bigot; but his enmity to the church of Rome is visible, not only from his eloquent sermon upon the rise of Antichrist, but from many passages in his Alliance, where he agrees with Rousseau* that a polytheistic worship which damns all out of its pale, and Popery, which brings in an *imperium in imperio*, are more hurtful than beneficial to the firm constitution of the state, and where speaking of four sects, whose opinions ought to be restrained as pernicious to society, he assigns reasons for restraining the Atheist, the German Anabaptist, and the Quaker, and adds to his catalogue the English Papist, who owning a foreign ecclesiastical power superior to all temporal dominion, should not be tolerated in any sovereign state†. He plainly hints, that in his opinion few English Papists would disown the superiority of that foreign ecclesiastical power to all temporal dominion. Jortin was, I believe, descended from a family of French refugees, who came to England after the revocation of the Edict of

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* Page 226. † Page 304.

Nantz. His mind had been early and deeply imbued with a just detestation of that spiritual tyranny which the church of Rome had exercised so frequently and so fatally. He was the rational but undaunted advocate of religious freedom; yet, such was the force of habit, that he seems to have considered any improvement in the sentiments of Catholics as a moral impossibility, and any relaxation of the laws enacted against them in this country as a dangerous experiment. Archdeacon Blackburne felt a stronger alarm than any of his contemporaries about the encroachments of Popery. He pointed the terrible artillery of ridicule and argument against Papal doctrines and Papal discipline, and perhaps under the influence of rooted prepossession he inwardly suspected that opportunities might occur when the transition from the church of England to the church of Rome would not be difficult to a certain class of ecclesiastics, whose stiffness in orthodoxy, and whose predilection for the hierarchy, he was not accustomed to treat with much tenderness. If, however, any of these celebrated men had been now living, I hope that they would have perceived their error, and retracted it, when they found that the Roman Catholics of England had begun to study and to acknowledge the best principles of religious freedom, that they were asking for a large and liberal toleration without the smallest possible chance of converting it to the purposes of establishment, and when, in the explicit, emphatic, and solemn forms which the legislature had prescribed, they before heaven and earth were prepared to renounce all obedience to such a spiritual power as directly or indirectly encroached upon the temporal dominion of an English king. If they had refused, or even hesitated to assist in easing the shoulders of their Christian brethren from a most galling yoke, I should have said to them, "Ye "know not what spirit ye are of"—ye are in effect calling, or at least teaching others to call for "fire from Heaven" upon a numerous class of your fellow-creatures, who have lost the power, and who disclaim the inclination of lighting again those flames which persecution had so often kindled upon earth—ye know not "the signs of the times" in which a gracious Providence has ordained you to live—

ye are contending only for party-liberty, which ye would stretch out one way only to narrow it in another—ye are not ashamed of using in substance the very same pretences for persecuting others that the enemies of your forefathers used for persecuting them *.

When I look back to the conduct of the Tories in the reign of James II. and even later times, their sagacity appears to me less unquestionable than their integrity. Mr. Hume, indeed, tells us that "the Tories have been so long "obliged to talk in the republican style, that they seem "to have made converts of themselves by their hypocrisy, "and to have embraced the sentiments as well as language "of their adversaries. There are, however," says he, "very "considerable remains of that party in England, with all "their old prejudices †." "After the extinction of the "Stewart line, they have nothing to fear from the willingness "of a Sovereign to change their religion; and having rea-"son to indulge *the expectation of becoming the favoured party*, "they in their own minds have no restraint from the ex-"cess of their political tenets." "They love liberty," says Mr. Hume, "but they love monarchy more." Their love of liberty, however, is too often confined to words, in which few men will venture to avow any hatred of it; while in their actions their love of monarchy is a more uniform and predominant motive. Their pride is not violated by wrongs, which fall with equal severity upon classes not so likely to be selected for those distinctions which are conferred by the Crown, and the same pride is exquisitely gratified by the prevalence of those opinions which enable them to exercise a more uncontrouled sway, in their own circle, and for their own ends. I believe, however, that many of them bow before the throne without any direct consciousness of bad intention. I should impute to them the want of foresight, rather than the want of virtue. I give them credit for sincerity in their attachment to Protestantism as well

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* See Account of European Settlements, vol. ii. p. 232.

† Hume's Essay on the Parties of Great Britain.

as monarchy. My only fear is, lest they should multiply the enemies of both, by the blind and stubborn neglect of every opportunity to conciliate them. To a body of men, in whose leading principles I do not concur, I shall not presume to offer any advice, because it might be equally unwelcome and unprofitable. But, with their Protestant opponents I should expostulate more freely, because I cannot abandon the hope that expostulations addressed to them may have greater effect. Let me, then, at this momentous crisis, intreat them to remember, that if liberty of conscience had not been practically asserted, when, in speculation it was understood imperfectly, the church of England would never have existed—that, if the machinations afterwards meditated, and under the insidious pretence of toleration attempted against it, had not been foiled, that church would long ago have been subverted—that the minds of kings, as well as subjects, swarm with contradictions; and that the ruling passion, after a successful conflict with the inferior passions, draws over their strength to its own party—that Ferdinand and Isabella, who had favoured the *Holy* Brotherhood, and protected their subjects against an oppressive nobility, were led, by their love of power, aided as it was by their bigotry, and triumphing over their humanity, to establish and extend the dreadful tyranny of the Inquisition—that Charles the Fifth had not ceased to be a Papist, when, with impious mockery, he directed prayers to be offered up in Papal churches, for the deliverance of the very Pope, who by Charles's own orders, and for Charles's own purposes, had been thrown into confinement—that his religious prejudices co-operated with his political—that his favourite creed seemed to him a most powerful instrument for the ends of his more favourite ambition—that, before he had taken counsel, not from an abject flatterer, but a trusty monitor in his watch, he looked upon an uniform system of belief and worship as conducive to an uniform system of obedience—that Louis XIV. who assisted and even bribed Charles II. to thrust back the church of England from Protestantism to Popery, had in 1664 imposed most humiliating conditions upon Alexander the Seventh, when Crequi the French ambassador thought

himself affronted by the guards of his infallible Holiness; and in 1687 sent the Marquis de Lavardin to Rome with an armed force to sustain the iniquitous claim of the franchises, and insult Innocent the Eleventh in his capital* —that, for several centuries the power of the Pope has not been very formidable, unless assisted by the secular power of its adherents—that the probability of obtaining that assistance is now very slender—that, by standing armies and other resources, Princes have found a surer support for their authority, than their forefathers received from Papal bulls†—that, in order to make their own government more regular and more independent, Papal Sovereigns have of late resisted openly the claims of the Pope—that, even in foreign countries, Catholic subjects have begun to distinguish with greater accuracy between spiritual and temporal power—that the general effects of theological tenets are experimentally known to be controuled by other and *more* general properties, which have their root in human nature itself—that, in the barter of commerce‡, and in the harm-

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* See Russell's Modern History, vol. iii. p. 344, and Gibbon's History, chap. 70.

† "Les Excommunications, les Interdits sont des Foudres, "qui n'embrasent un Etat, que quand ils trouvent des matieres "combustibles. Il n'y en avoit point alors; mais peutêtre Robert "craignoit-il qu'il ne s'en formât." (Voltaire's Essay on the Spirit and Manners of Nations, vol. ii. cap. 39.)

‡ "Are not very many of the Catholics intimately acquainted "with their Protestant brethren, their partners in trade, their "tenants, their landlords, their customers, their agents, their "servants, their friends and companions in private life? Do we not "mutually partake of the hospitality of each other, clergy with "clergy, laymen with laymen, in numerous mixed companies of "different religions and occupations?" (Dr. Troy's Letter to Sir J. C. Hippesley, dated Dublin, June 12, 1805.

less pleasures of social intercourse*, Papists and Protestants can now live together without quarrelling about the

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* The passage which in our translation runs thus "the Jews "have no dealings with the Samaritans," means, I believe, that there was no convivial intercourse between them: "e contextu "evangelistæ certum est, non licuisse Judæis eodem Cibo et Potu, "quo Samaritani, uti: idque Phrasi μη συγχρᾶσθαι significare. "Neque enim novum est, voces ad victum pertinentes ἐλλειπτικῶς "subintelligi." Confer ἑτοιμάζειν, Luke ix. 52, xxii. 12, Mark xiv. 15. and παρασκευάζειν, Acts x. "Ad hunc itaque modum "et Samaritis dixerit, ἐ συγχρῶνται, h. e. non una utuntur "Cibo et Potu. Scio hoc ita vulgo accipi, ac si omne commercium "cum Samaritis interdictum Judæis fuerit. Sed vereor ut hoc "ostendi possit." (Vid. Vossii Dissertat. ad 2 Tim. ii. 22, in the second part of Thesaurus Theolog. Philolog. p. 700) "Malim tenere explicationem Grotii et aliorum, juxta quos "verto: non enim amice utuntur Judæi Samaritanis: Ita ut "nullam Judæis inter Samaritanos intercessisse familiaritatem asse-"ratur. Ita simplex χρᾶσθαι haud raro occurrit." (Isocrates adv. Callim. p. 550.) "τῶν δὲ χρωμενων τινὲς τάτῳ, nonnulli "vero, qui illo familiariter utebantur." (Joseph. Antiq. lib. XVIII. c. viii. p. 630.) "σφόδρα γάρ ἀλλήλαις εχρῶντο, ἀιδὲ γυναῖκες "magna has inter mulieres familiaritas intercesserat." (Plutarchus in Arato, p. 1048.) "ἄνθρωπον ἐ πόνηρον, ἀλλὰ καὶ κεχρη-"μένον ἐκείνῳ, hominem non malum, imo et ipsi familiarem." (Vid. Kypke, Observationes Sacræ ad Johan, c. iv. v. 9.) In the Latin language the sense of *uti* is similar to that of χρᾶσθαι in the foregoing passages:

"Si sciret regibus uti.
"Utere Pompeio Grospho.

and more fully in the following:

"Me Capitolinus convictore usus amicoque
"A puero est."

HORAT.

true faith—that, in some parts of the continent, Protestants and Catholics worship in the same sanctuary on the same day—that in Ireland, Papists fought under the banner of William the Third, while Protestants risqued their lives in the cause of his Catholic rival—that, in the war of 1745, Lutherans, Calvinists, and Church of England men united with German Catholics against the arms of France—that, at this very hour, the inhabitants of Spain and Portugal are, together with their Protestant allies, shedding their blood for the defence of a common and most glorious cause —that, however it may *once* have "been thought essential "to the Roman Catholic religion to inspire a violent ha- "tred to every other worship*," milder and juster sentiments are now avowed alike by their laity and their clergy —that, even "in dividing the sacerdotal from the regal "office†, and bestowing it on a foreigner, who has always

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* Hume on the Standard of Taste.

† "Upon this subject there is a difference of opinion between Mr. Hume and Mr. Gibbon. "Though a Christian philosopher," says Mr. Gibbon, "and a patriot will be equally scandalised by "the temporal kingdom of the clergy, yet Mr. Hume seems to "have been hasty in concluding that if the civil and ecclesiastical "powers be restored in the same person, it is of little moment "whether he be styled prince or prelate, since the temporal cha- "racter will predominate." (See Hume's History, i. 389, and Gibbon's History, vi. 70.) The History of past ages is, I think, in favour of Mr. Hume's opinion. But there is little occasion for Protestants to enter into the controversy, because there is little or no danger that the Pope will again acquire any large share of that temporal power, which for several centuries has been on the wane, and is now scarcely visible. The inconveniencies which Mr. Gibbon found in the sacerdotal power of the Pope are, the frequency of election, and that education in a convent which is most adverse to reason, humanity and freedom, and the primitive stain of which will adhere to the mind and manners of a Pope. (ch. 70.) I see many other inconveniencies, which, however, it is unnecessary for me in this place to enumerate. But I must grant at least a

"a separate interest to that of the public *," they bestow it upon one, who in the present condition of Europe can rarely have an opposite political interest, and that they have accompanied the grant by express *limitation* † to every kind and every degree of pretension which directly or indirectly encroaches on the temporal rights of any sovereign —that the *real* and visible interest of the Pope himself is to propitiate rather than to incense Protestant subjects and Protestant kings; and that having lost every prospect of establishing his own religion in Great Britain, he must in his own proper agency implore even the toleration of it

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qualified assent to the following statement of Mr. Gibbon. "The "ecclesiastical government may be praised in its *present state*, as a "mild, decent and tranquil system, exempt from the dangers of "a minority, the sallies of youth, the expenses of luxury, and the "calamities of war." (ch. 70.) We in our own days have seen that the Pope suppressed the Order of the Jesuits, with the concurrence, and indeed at the instigation of Roman Catholic sovereigns. But if a Pope had been inclined to abolish the Inquisition in Spain or Portugal, it may be doubted whether such an attempt would not have been opposed, not only from the prejudices of the people, and from superstition and the love of spiritual dominion in the priesthood, but from secular views of policy and ambition in their most Catholic and Faithful Majesties: *Regum timendorum in proprias greges* by whom the *imperium Jovis* was recognised, or resisted, as it suited their convenience

* Hume on the Protestant Succession.

† See an Abstract of the Answers of the six foreign Roman Catholic Universities to the Questions proposed to them in the year 1788, and the letter from Dr. Troy, titular Archbishop of Dublin, and Dr. Maylar, titular Bishop of Cork, and other important papers, in the appendix to Sir Charles Hippesley's very useful book, printed in London for Faulder, but, I believe, not published.

as a favour, rather than demand it as a right—that the Catholics, who, even when Mr. Hume wrote *, were less hostile to the Whigs, from experience of their tolerating spirit, have, upon longer reflection, and perhaps, after the discipline of longer and sharper personal sufferings, been more fully won over to the sounder parts of their political system—that the danger from any religious party is to be measured by the relative situation in which it stands to other parties, at any given period—that, if present appearances may be trusted, the church of England has far less to fear from Catholics than from the members of a sect eminently wise in their generation, daily encreasing in numbers and activity, and implacably hostile to the cause of Catholicism—that nothing, perhaps, "but zeal can over-"set an established religion; and that an over active zeal "in friends is apt to beget a like spirit in antagonists †"—that there scarcely "ever occurs in any deliberation a "choice which is either *purely* good or purely ill ‡"—that, by the course of public affairs, we, in all probability, must, ere long, be compelled to chuse between measures which must irritate, and measures which may conciliate—that if, upon a balance of all circumstances, it should appear more safe to conciliate than to irritate, the principles avowed by English Whigs point *at once* to lenient expedients; and that in tolerating and even favouring the claims of the Catholics, moderate Whigs, whether laymen or ecclesiastics, will be quite *as* praiseworthy for good sense and liberality, as their predecessors were for discernment in suspecting, and firmness in resisting the Catholic supporters of the Stuart family.

The ardour and the curiosity of men upon the controverted subjects of religion, have visibly cooled. But experience should teach us, that if we suffer the principles of religious freedom to be undermined by those pretexts

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* See Essay on Superstition.

† Hume's Essay on the Coalition of Parties.

‡ Hume on the Protestant Succession.

which politicians are seldom unable, and zealots seldom unwilling to employ, we shall make room for speculative and practical encroachments upon that political freedom which we have long enjoyed, and by which the dignity and security of the Crown are blended with the rights and happiness of the people.

The foregoing remarks I would recommend with peculiar earnestness, but with all becoming deference to the consideration of those ecclesiastics who can love and esteem Tories, while they differ from them, and who aspire to the praise of consistency in the application of their own tenets to the business of life. It is by good actions, the fruit of good principles, they must hope to give effect to their own good intentions, and to soften that dislike which in former ages was excited against their order by the cruelty of persecutors, the haughtiness of hierarchs, the narrowness of polemics, and the servility of venal and temporising flatterers. Indifferent they may be to the bluster of Bolingbroke, the jeers of Gibbon, and the buffooneries of Voltaire. Ignorant, however, they cannot be of the formidable accusations which have been set in array against them by an assailant who united in his own character all the advantages of a profound thinker, an elegant writer, and a most amiable man. To themselves, indeed, as to the teachers in every other church, he spoke the language of good sense and good morality, when he said, "Where the "difference of principles is attended with no contrariety of "action, but each may follow his own way, without in- "terfering with his neighbour, as happens in all religious "controversies; what madness, what fury, can beget such "unhappy, such fatal divisions?*" But to their forefathers, as I shall ever contend, he did great injustice, when, sacrificing historical accuracy to philosophical acuteness, he said, that "the resemblance in their superstitions long u- "nited the high church Tories, and the Roman Catholics

* Hume's Essay on Parties in general.

" in support of prerogative and kingly power*." I enter not, for the present, into any controversy with persons who class the differences between the church of England and the church of Rome among those " unintelligible disputes " which are not worthy the reflection of a man of sense." But, if upon doctrine and discipline, the dissent of our forefathers from the Romish church had not been sincere, and, in their judgment, wide, they would with little reluctance have surrendered their own religious establishment to the prejudices of James II. and they would have been impelled to make the surrender by that very fondness for mystical dogmas, and that very eagerness for spiritual domination which have been so frequently, and, in many points, so unjustly imputed to them. My anxious desire is, that my own contemporaries would endeavour to refute the charges alledged against them, by performing other duties, which seem to me to be required by the exigencies of other times. If they will consider the history of past ages, as " written for their own learning"—if they will not resist the " tendency of science to be changed into con- " science," and to make that which is reasonable to become " a law†"—if they will look abroad to the actual state of society—if they will attend to the changes which have taken place in the directions and results both of speculation and practice—if they will calculate the effects of that impatience which men, who give themselves credit for being improved, feel and express against every obstacle to farther improvements, whether real or supposed—if they have been instructed that " all laws divine and human are desirous " of sweet and merciful interpretations, and that of them- " selves they love to yield to necessity and to charity‡" —if, by a becoming mixture of vigilance and forbearance they are careful " not to let their good be evil spoken of"

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* Hume's Essay on Superstition.

† Taylor's Ductor, book ii. chap. 1.

‡ Taylor's Ductor, book i. chap. 6.

deservedly—if, in singleness of heart, they will themselves "hold fast to that," which by themselves has been embraced as true—"if, in a spirit of faith unfeigned, they will learn "to love the brethren, whether they be of Paul, or of "Apollos, or of Cephas"—then will they "walk worthy "of the vocation wherewith they are called," and triumph over the accusations of their bitterest and most powerful adversaries. They will shew "that they can bear contra-"diction with patience"—that they have subdued that "pride" which is said "to support their vindictive disposition"—that, "acting as a society, they are" *not* "for ever actuated "by ambition, pride, revenge and a persecuting spirit"—that, as individuals, they not only "have a considerable share in "the learning of the times," but in all the various advantages "of an extended and progressive civilization"—that "their "taste and eloquence are" *not* "always better than their skill "in reasoning and philosophy;" and that, for the "noble "virtues of humanity, meekness, and moderation," which "very many of them" are by Mr. Hume himself allowed to "possess" they "are beholden" not *more* "to nature or reflec-"tion," than to the precepts of their religion, the constitution of their church, and "the genius of their calling*."

Mr. Gibbon tells us† that "the modern times of religious "indifference," I should say moderation, "are most favour-"able to the peace and security of the clergy, who under "the reign of superstition had much to hope from the igno-"rance, and much to fear from the violence of mankind." Among other reasons for which I would, in one instance, alter the language before I adopt the observations of Mr. Gibbon, I ought to state, that the very indifference of which he spoke, and perhaps approved, would be *eventually* injurious to the interests, to the honour, to the personal morals, and the official usefulness of a Christian priesthood. It would relax their diligence, not only in theological inquiries, but in those critical, historical and philosophical researches which are necessary preparations to their pro-

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* See Hume's Essay on National Characters, Note I. † Cap. 69.

fession, which are inseparably connected with their labours in defending and explaining the truths of religion, natural and revealed, and which have the additional, though collateral, advantage of qualifying them to partake in *every* kind of progressive knowledge, upon every subject of literature and science. Having received the first impulse to study from the desire of accumulating that various information which they are to employ as clergymen, they become scholars, philosophers, and good writers, as well as good theologians. But their ardour in pursuits which, as connected with profane learning, deserves the praise of every impartial unbeliever, would be chilled, many of their attainments would be useless, much of their genius would lie dormant, if a general indifference to religion *really* prevailed. On the other hand, though they inculcate moderation and practise it, they will find sufficient incitements to their industry, and sufficient employment for their understandings among a civilised people to whom, indeed, they are *peculiarly* responsible for the neglect or the use of the means which are afforded them for intellectual improvement. They will "hope" for little, "from the ignorance of mankind," if they endeavour to enlighten it—they have little "to fear from the violence of mankind," if they do their duty in assuaging it, by precept and example.

In recommending our religious tenets to those who differ from us, a good and wise man will at first act in conformity to the spirit of a caution, which Quintilian recommends in the education of youth, "ne studia qui amare nondum pos-"sunt, oderint." He will take care, lest his own passions obstruct the operations of his understanding—he will be content to enlighten gradually, before he expects to convince impartially—he will be studious not to provoke, if he honestly wishes to persuade—he will show by his own example the happy influence of his own tenets—and, though he should fail in enlarging the number of converts, he will have the conscious merit of attempting to assuage the animosities of foes. The history, whether of Catholics or Protestants, does not encourage me to repose any large confidence in the precision with which men in power have been accus-

tomed to calculate the energies of moral causes, or the authority of moral obligations. But upon subjects intimately connected with virtue and religion, persons in private stations would do well not to trifle with their own responsibility in a life to come, and if certain questions now afloat were to be decided by an appeal, not to the wavering temper of human policy, but to the pure and uniform spirit of Christianity itself, "good will to men" would be recommended, as the most powerful instrument for restoring and perpetuating "peace upon earth."

"I perceive," says Dr. Paley, "no reason why men of "different religious persuasions may not sit upon the same "bench, deliberate in the same council, or fight in the same "ranks, as well as men of various or opposite opinions upon "any controverted topic of natural history, philosophy, or "ethics*." This principle has, in fact, been already recognised by the legislature in their relaxation of many severe statutes, which once were in force against the Catholics. Such however is the unalterable constitution of the human mind, that in certain circumstances the experience of indulgence excites men to a more anxious investigation into rights, that the removal of fear is succeeded by the perturbations of hope, and that while pretensions, reasonable in the estimation of those who urge them, are resisted, previous concessions are generally imputed to some disingenuous motives. Protestants may be found, as well as Catholics, who thus state the dilemma. If the Catholics ought to be trusted, more ought to be granted to them—If the Catholics ought not to be trusted, too much has been granted to them already. To retreat is inglorious, to halt long is impossible, and to advance, in the judgment of some men, might be indiscreet. Without entering directly into the controversy, I shall content myself with observing that one of the arguments employed against the Catholics is directly opposite to the known practice of our legislature in the most important regulations of policy and religion, and is utterly incompati-

* On Religious Establishments, p. 582.

ble with the adaptation of any government to those changes, which causes, innumerable and irresistible, are producing in the sentiments and interests of mankind. "In earthly "affairs," says Mr. Gibbon, "it is not easy to conceive "how an assembly of legislators can bind their successors, "invested with powers equal to their own*" We are all aware of the practical difficulty, and they who from their high stations are authorised, and indeed bound to decide upon it, should reflect very seriously upon those changes, which are silently taking place in the general character of our country, should have "a quick and accurate feeling of "the tendencies of this varying character, should endea- "vour to trace the causes and the modes of the variation "itself, should attend to the aggregate of population at any "given period, and to the numbers of particular classes, "and should direct their attention to every thing which "affects the character of individuals—manners, education, "prevailing occupations, religion, taste, and above all, the "distribution of wealth, and the state of prejudice and opi- "nions†." If these various and important objects were regarded with the impartiality which they deserve, the counsels of ministers, and the regulations of Parliament would be favourable to the commonweal.

In the extremes of religious credulity, and its opposite, there is a secret and restless distrust, which makes men look out for support from the zeal and the number of converts. But when the favourite opinion is supposed to prevail, the perturbations of fear are succeeded by the triumphs of pride, and pride imperceptibly generates a propensity towards jealous or scornful intolerance. There is also an intermediate, and, I think a happier state of mind when, firmly standing within the pale of our own community, we abstain from all annoyance of those who are without it; gladly give admission to every one, who from conviction wishes to be

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* Vol. vi. p. 409.

† See the masterly critique in the Edinburgh Review, upon Mr. Fox's History.

admitted; and indulge affectionately, but not ostentatiously, the pleasing hope that they who come over to us will be delivered from some debasing error, or gradually brought nearer to some useful truth. Upon this principle I, like other men, should feel great satisfaction in any accession of number to the religious community in which I myself was educated, and the interests of which will ever be dear to me. But I am convinced, from long observation, that unity in religious opinions is unattainable—that the attempt to produce it by artifice or force recoils upon its employers—that every truth, really interesting to mankind, is discovered more fully and more clearly by the investigation of inquirers, whose ability and perhaps motives to inquire are various—that the spirit of proselytism, even in honest men, is often accompanied by excess of zeal, impatience of contradiction, and a secret propensity towards intolerance—that public measures ought to be guided by views of the public good, at once precise and large—and that the public good itself is most effectually promoted and secured by a temper of general moderation among the different members and different classes of society. "If Popery," says Dr. Paley, "and Protestantism were permitted to dwell quietly together, "Papists might not become Protestants, (for the name is "commonly the last thing that is changed) but they would "become more enlightened and informed; they would by "little and little incorporate into their creed many of the "tenets of Protestantism, as well as imbibe a portion of its "spirit and moderation*." "Would we let the *name*† stand,"

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* See, as before, Paley, p. 580.

† I am much less anxious to multiply converts from the Church of Rome, than to mitigate the prejudices of those who conscientiously remain in it. All the great ends of morality and of public peace would be answered by their gradual approach to protestant notions, or at least to that *spirit*, which is the glory of genuine

Dr. Paley adds in a note, "we might often attract men, "without their perceiving it, much nearer to ourselves,

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genuine and consistent Protestantism. But the attempt to make proselytes might stir up unprofitable and even pernicious controversies.

In the fifth volume of Mosheim's Ecclesiastical History, we have an account of a projected union between the Gallican Church and the Church of England; and I am sure that great commendation is due to Dr. Maclain, not only for his explanation of the spirit by which our own establishment is actuated, but for his defence of the learned and temperate Archbishop Wake, against the errors and censures of Dr. Mosheim.

In the fourth volume of Grotius's works there is an excellent treatise called Georgii Cassandri de Articulis Religionis inter Catholicos et Protestantes Controversis ad invidissimos Imperatores Augustos Ferdinandum I et Maximilianum II. Ejus Successorem Consultatio. I have read it with great delight; I received great instruction from the Annotata which Grotius wrote upon it; and from a subsequent work, called Rivetiani Apologetici pro Schismate contra votum Pacis facti Discussio.

The failure of Wake's plan and of Ferdinand's for a kind of συγχρητισμος in religion, would I think, discourage prudent men from endeavouring to accomplish a *direct* and *formal* union between the Church of Rome and the Church of England. The opinion of Grotius made a deep impression not only upon Laud, Sheldon and Hammond, whom Warburton has censured with great sharpness, but upon the very learned Archbishop Bramhall, and such were the apprehensions of the Protestant Dissenters in England, that Mr. Baxter published a book which he called A Treatise of the Grotian Religion. Bramhall replied to it with vigour, acuteness, and erudition, worthy of a champion who had grappled most skilfully and most bravely with the puissant Hobbes. "I acknow-"ledge," says he, "the very title of Mr. Baxter's book did not "please me. Different opinions do not make different *Religions*. "It is the Golden Rule of Justice, *not to do that to another*, "*which*

" than if they did perceive it, they would be willing to " come."

" *which a man would not have done to himself.* He would take " it unkindly to have his own Religion contradistinguished into the " *Prelatical Religion*, and the *Presbyterian Religion*, and the " *Independent Religion*, and the *Anabaptistical Religion:* And " then to have his *Presbyterian Religion* subdivided, either ac- " cording to the number of the Churches, into the *English* Re- " ligion, and the *Scotish* Religion, and the *Gallican* Religion, " and the *Belgian* Religion, and the *Helvetian* Religion, and " the *Allobrogian* Religion; or of all the names of the Reformers, " into the *Calvinistical* Religion, and the *Brownistical* Religion, " *Zuinglian* Religion, and *Erastian* Religion, &c. For all these " have their differences. And so himself in his Preface to this " very Treatise, admits those things for pious Truths, for which " we have been branded with the names of *Papists* and *Arminians.* " The Church of Christ is but one, *one Fold and one Shep-* " *heard*, Christian Religion is but one, *one Lord, one Faith, one* " *Hope.* Then why doth he multiply Religions, and cut the " Christian Faith into threds, as if every opinion were a Funda- " mental Article of Religion?" (See Bramhall's Works, p. 607.)

Such sentiments would do honour to the most enlightened prelate in an age far more enlightened than that in which Bramhall lived. Happy were it for the Christian world, if the same principles were avowed in the same spirit by men who are safe from persecution, as Bramhall was not—who enjoy advantages which Bramhall did not—who have a smoother access than Bramhall had to the knowledge of religious truths—and who in the better circumstances of their times may find stronger encouragements than Bramhall found to moderation and charity.

Bishop Taylor has twice adverted to the subject of union with the Church of Rome, and I think that intelligent and serious Protestants will be much interested by the statements and observations of that excellent prelate. " There is great reason for " princes to give toleration to disagreeing persons, whose opinions " by fair means cannot be altered; for if the persons be confident,

" they

The remark which Dr. Paley has made upon the importance of names is worthy of his sagacity, and happily

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"they will serve God according to their persuasions; and if they "be publickly prohibited, they will privately convene, and then "all those inconveniences and mischiefs which are arguments "against the permission of conventicles, are arguments for the "public permissions of differing religions, because the denying "of the public worship will certainly produce private convent-"icles, against which all wise Princes and Common-wealths have "upon great reasons made edicts and severe sanctions." (Epist. dedicat. to Discourse on Liberty of Prophesying.) "King James "of blessed memory, in his Letters to the States of the United "Provinces, dated 6 March, 1613, thus wrote. Magis autem e "re fore si sopiantur, authoritate publica, ita ut prohibeatis minis-"tros vestros ne eas disputationes in suggestum aut ad plebem "ferant, ac districte imperetis ut pacem colant, se invicem "tolerando in ista opinionum ac sententiarum discrepantia, * "* * * * * eoque justius videmur vobis hoc ipsum suadere "debere, quod neutram comperimus adeo deviam ut non possint "et cum fidei Christianæ veritate, et cum animarum salute con-"sistere, &c. The like counsel in the divisions of Germany, at "the first reformation, was thought reasonable by the Emperor "Ferdinand, and his excellent son Maximilian; for they had ob-"served that violence did exasperate, was unblessed, unsuccessful "and unreasonable, and therefore they made decrees of toleration "and appointed tempers and expedients to be drawn up by dis-"creet persons, and George Cassander was designed to this great "work, and did something towards it: and Emanuel Philibert, "Duke of Savoy, repenting of his war undertaken for religion "against the Pedemontans, promised them toleration, and was as "good as his word: as much is done by the nobility of Polonia. "So that the best Princes and the best Bishops gave toleration "and impunities; but it is known that the first persecutions of dis-"agreeing persons were by the Arians, by the Circumcellians and "Donatists, and from them they of the Church took examples,

"who

for this country the persons who now adhere to the bishop of Rome have anticipated the wishes of many reflecting

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" who in small numbers did sometime persuade it, sometime " practise it!" (Ibid.)

" Let us consider what ways men have propounded to find " out truth, and upon the foundation of that to establish peace in " Christendom: 1. That there is but one true way is agreed upon; " and therefore almost every church of one denomination that " lives under government propounds to you a systeme, or collective " body of articles, and tells you, *that's* the true *Religion*, and " they are the *Church*, and the peculiar people of God: like " Brutus and Cassius, of whom one says, ubicunque ipsi essent, " prætexebant esse rempublicam: they supposed themselves were " the commonweath, and these are the church.

" 2. Others cast about to cure this, and conclude that it " must be done by submission to an infallible guide; this must do " it or nothing; and this is the way of the Church of Rome.

" 3. Some very wise men finding this to fail, have under- " taken to reconcile the differences of Christendom by a way of " moderation. Thus they have projected to reconcile the Papists " and Lutherans, the Lutherans and Calvinists, the Remonstrants " and Contra-Remonstrants, and project that each side should abate " of their asperities, and pare away something of their proposi- " tions, and join in common terms and phrases of accommodation, " each of them sparing something, and promising they shall have " a great deal of peace for the exchange of a little of their opini- " on. This was the way of Cassander, Modrevius, Andreas " Frisius, Erasmus, Spalato, Grotius, and indeed of Charles the " Fifth in part, but something more heartily of Ferdinand the " Second. This device produced the Conferences at Poissy, at " Montpellier, at Ratisbon, at the Hague, at many places more; " and what was the *event* of these? Their parties when their de- " legates returned, either disclaimed their moderation, or their " respective Princes had some *other* ends to serve, or they per- " mitted the meetings upon uncertain hopes, and a *trial*, if any " good might come; or it may be they were both in the wrong,

" and

Protestants, who remember that Papist, as a term of reproach, was originally employed by Martin Luther. Our

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" and their mutual abatement was nothing but a mutual quitting " of what they could not get, and the shaking hands of false friends; " or it may be it was all of it nothing but hypocrisie and arts of crafti- " ness, and, like Lucian's man, every man would be a man and a pestle " when he pleased." (Taylor's Via Intelligentiæ, Sermon, preached before the University of Dublin.) The whole discourse is a masterpiece of eloquence. But I shall content myself with adding the following passage from Taylor's address to the reader.

" I have often thought of those excellent words of Mr. Hooker " in his very learned discourse of justification: Such is the untoward " constitution of our nature, that we do neither so perfectly under- " stand the way and knowledge of the Lord, nor so stedfastly " embrace it when it is understood; nor so graciously utter it " when it is embraced, nor so peaceably maintain it when it " is uttered, but that the best of us are overtaken, sometime " through blindness, sometime through hastiness, sometime through " impatience, sometime through other passions of the mind, " (whereunto, God knows, we are too subject) that I find " by true experience, the best way of *learning* and *peace* is " that which cures all these evils, as far as in the world they " are curable; and that is the ways of holiness, which are there- " fore the best and only way of truth. In disputations there is no " end, and but very little advantage; but the way of godliness " hath in it no error, and no doubtfulness." (Prefatory Address to the Via Intelligentiæ.)

In plain truth I prefer, with Dr. Paley, a gradual and mutual approach of opinion among individuals improving themselves in general knowledge, and not irritating each other by controversy to any formal and express declaration in one church upon its approach to another church in disputed points of doctrine. Men who are endowed with good sense and enlightened by education may differ less and less from one another, while the ignorant and prejudiced would take an alarm at the smallest authorised concessions to those who differ from them in matters of faith.

English contemporaries disclaim the appellation of Papist, and by disclaiming it they mean to give a pledge for their sincerity in denying that their spiritual head has any authority whatsoever in the temporal concerns of the English government. I should myself have wished to see the word Papist applied only to those persons who formerly acknowledged that *imperium in imperio*, which every re-

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faith. I believe that the general experience of mankind will induce men of observation to acknowledge that the answer of Barlaam, a Legate from the Greek Church, to Benedict XII. was very judicious. "Thirty or forty of our doctors may agree with "those of the Vatican in their love of truth and unity of belief, but "what would be the use or the recompense of such agreement? "The scorn of their brethren and the reproaches of a blind and "obstinate nation." (Gibbon's History, ch. 66.)

While freedom of inquiry continues, and while it is aided by the growth of the soundest principles in criticism, ethics, and the more useful parts of metaphysics, changes upon speculative points will gradually be wrought in the minds of reflecting individuals, and if those changes be accompanied by a spirit of mutual respect and mutual charity, the influence of that spirit will silently diffuse itself among all the members of all religious societies. A direct and avowed intercommunity of doctrine and discipline will become less necessary, and if a favourable opportunity should arise for attempting such intercommunity, even partially, the attempt itself will be less difficult. The freedom of private persons in communicating their opinions, if used with discretion, must contribute to the discovery or the elucidation of important truths, and though the governors of Protestant churches may see good reasons for caution in making any large and public changes in the forms of ecclesiastical establishments, yet the members and even teachers of those establishments, by communicating to the world the results of their laborious and impartial researches will have little to fear from the sarcastic observation of Bossuet: "Il est bien permis de changer dans la nouvelle reforme, "mais il n'est pas permis d'avouer qu'on change." (Var. v. 5. p. 405.)

gular and independent government would be disposed to resist; and, as to the change of appellation which has taken place among ourselves, we may presume that our countrymen were directed to their choice by that prudence which induces men to shake off an odious and alarming name, and by that pride which makes them impatient of carrying about themselves even the sign of subjection to a kind of power which they no longer recognise.

In opposition to the opinions and the wishes which I have just now expressed, some well-meaning, and I add, well-informed persons may contend for a doctrine which is supported by high authority, and which I, therefore, shall proceed to examine, so far as the belief of it may tend to perpetuate and inflame the differences which exist between Protestants and Roman Catholics.

That the "Pope is Antichrist," Warburton represents "as the great Protestant principle*;" and in a most elo-

* "The great Protestant Principle," as it is called by Warburton, was honoured by a strenuous advocate in James the First, who, as Mr. Zouch tells us, (Life of Sanderson, page 42.) "was "so well pleased with Dr. Robert Abbott's book De Antichristo, "that he ordered his own Commentary upon part of the Apo-"calypse to be printed with it, when the second edition appeared, "in 1608." The work of Abbot contains all the historical and critical learning which belongs to the subject: the latinity is clear and vigorous, and the arguments employed in it refute, I think, the attempts of Bellarmine to prove "Nomen Antichristi literale "et mysticum proprium esse non appellativum; Antichristi sedem "in Ecclesiâ Hierosolymis esse debere, ante Christi tempus tribus "annis et dimidio definiri posse," &c. After comparing the work of the Oxford professor with the Commentary of James, I very much doubt the justness of the panegyric, which Launcelot Andrews, in his preface to the Opera Regia, has bestowed upon a royal polemic, whom his tutor Petrus Junius of Seaton had called Θεοδίδακτον. James, even before he attained the age of twenty, had manifested his hostility to Popery by his Paraphrasis Apocalypseos,

quent Sermon he states the causes which brought that principle into temporary disrepute. "The moderation,"

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lypseos, to which his Pia Meditatio on the twentieth chapter is subjoined in the collection of his works.

Favourable as was the reception, which the writings of James are known to have met from the ecclesiastics of his day, I much doubt whether his consistency and sincerity bore any proportion to his zeal. In Scotland he, with his hands lifted up to heaven, blessed God, "that he had honoured him to be a king over the "sincerest *kirk* in the world—ridiculed the church of Geneva "for keeping Pascha and Sale, and represented the service of the "neighbouring Church of England as an evil missa and wanting "nothing of the miss but the liftings, &c." (See note on Rapin.)

But, when he sat on the throne of England, he is said by Rapin to "have thought all religion good, provided it taught obe-"dience to Sovereigns, and preserved the hierarchy, which" the youthful panegyrist of an anti-episcopalian church afterwards considered as "a fundamental article."

In the Epistola Dedicatoria Robert Abbott thus addresses him: "Te vero unum illud adhortamur, et flexis genibus obsecra-"mus, ut quod coepisti facere magis magisque facias, ut Ecclesiæ "Romanæ pestes et contagia depellas, idque operam des quod a "regibus terræ se Deus expectare denunciat, postquam Babylonicæ "meretricis jugum excusserint: Odio habebunt illam et desolatam "facient, et nudam, et carnes ejus comedent, et ipsam igne con-"cremabunt. In quam rem qui te hactenus intelligimus curâ "omni et cogitatione tam vehementis incubuisse, dubitare non "possumus quin futurum sit, ut primis postrema respondeant et "iisdem perpetuo vestigiis, ad Christi honorem advigiles, et exter-"minium Antichristi."

What the professor thus earnestly requires from the king, the king, after he began to be suspected, with equal earnestness professed for himself when, in answer to the petition of Parliament, he said, "that what religion he was of his books did declare, "when he wished it to be written in marble and remain to pos-"terity

says he, " of Grotius and Episcopius, and a visionary " scheme of Laud *, who had been bred up in college

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" terity a mark upon him, if he should swerve from his religion; for " he who doth dissemble with God, is not to be trusted with men, " and when he protested before God that his heart had bled, when " he had heard of the increase of Popery." Yet he joined with his courtiers in branding George Abbott, Archbishop of Canterbury, and brother of the Professor, with the name of Puritan, because this honest Prelate " in discharge of his conscience towards God, " and duty to his majesty, had told him, that he was labouring " to set up the most damnable and heretical doctrine of the Church " of Rome and the Whore of Babylon, and that it would be hate- " ful to God, and grievous to his good subjects, the confessors " of the Gospel, that his Majesty, who had so often disputed " against those heresies, should now show himself the patron of those " doctrines, which his own pen told the world, and his conscience " told himself, were superstitious."

While he encouraged reproaches and taunts against a Protestant Archbishop, he assured the Catholic Archbishop of Ambreun, that " he perceived him to be a man sent from God, to " whom he might truly open his mind, and that he *always* had a " good opinion of the Church of Rome." He became *so* reconciled to Antichrist, that in order to accomplish his own favourite purpose of marrying his son to a great royal family, he affected to treat all the disputed points between the Church of Rome and the Church of England as " mere scholastick questions"—assumed the most specious language of toleration as a disguise to his ambition—endeavoured to conciliate the court of Spain, by binding himself and his successors to treat his Roman Catholic subjects with all possible lenity—made the most favourable terms for the Infanta to exercise her own religion in England—granted her the right of educating all her children in that religion till they were ten years old—afterwards in his negociations with the court of France pledged himself in detail for Madame to retain the worship prescribed by the Church of Rome, and extended the privilege of educating her offspring according to that worship from their tenth to their thirteenth year.

Such

" with an aversion to the Puritans, indisposed both from
" pressing Popery with the victorious doctrine of Antichrist.
" Sheldon, a court divine, and afterwards an Archbishop,

Such was the firmness, and such the sincerity of the royal enemy to Antichrist, and the fatal effects of his contracts were visible in the errors, crimes and sufferings of his descendants. They who reflect upon the hypocrisy of James the First and Charles the Second, and upon the bigotry and inconsistency of James the Second, may be inclined to think that sovereigns would do well to meditate upon a plain and wholesome maxim, far more adapted to their duty and their honour, than all the lofty generalities, which beguiled the credulity and pampered the pride of James, upon the prerogative of kings: " The bread of deceit is sweet to a man, " but afterwards his mouth shall be filled with gravel."

Note upon the name of *Laud*, page 650, line 2.

* " Archbishop Laud is certainly exempt from any suspicion " of being inclined to Popery: but he entertained a chimerical no- " tion of the practicability of an union between the Churches of " England and of Rome; and he weakly hoped that this great ob- " ject might be accomplished by mutual and equal concessions." (Symmons's Life of Milton, p. 173.) I shall have occasion more than once to express my opinion upon the difficulty and indeed the inutility of a direct union between the Church of Rome and the Church of England. But in justice to the memory of Archbishop Laud, I am bound to declare, that the fury of religious zeal has seldom produced a more unfounded and malignant calumny than that which accused our prelate of favouring the Church of Rome at the expense of the honour, or the interests, or the safety of the Church of England. Be his errors and be his faults what they may, he was a sincere and a strenuous advocate for our ecclesiastical establishment. Perhaps he fell a martyr to it.

" Around his tomb let Art and Genius weep."

JOHNSON.

"denied publickly, in an act, at Oxford, that the Pope "was Antichrist. Hammond, who was of the same fashion- "able party, though much more able and discreet, ventured, "in pure aversion to fanaticism, to adopt the system of "Grotius on this head: a system, to which Popery has "been so much indebted; and which he seems to have in- "vented, for the sake only of his darling project—an union "between the Romish and Protestant churches.

"The civil wars followed, with the overthrow of the "constitution, by a rabble of armed fanatics, whose second "project was to destroy Antichrist, and erect the fifth mon- "archy of King Jesus. After the restoration, divines of "the greatest merit were led, by the severity of their suffer- "ings and their aversion to the fanatic spirit which occa- "sioned them, to discountenance a doctrine which had so "much contributed to aggravate the preceding mischiefs."

"Amidst the licentious practices, and the popish pro- "jects of the court of Charles II. whatever concerned the "sublimities of religion, and the mysterious ways of Provi- "dence; whatever disgraced the Church of Rome, and "stigmatised her with the brand of Antichrist, was sure to "be treated with contempt and aversion.

"Though the revolution removed many of these pre- "judices, and by the vindication of religious as well as civil "liberty, abated the rancour of sects and parties against "one another: though from the recent terror and abhor- "rence of Popery, it produced contrary prejudices fa- "vourable to the cause of truth, so that one might have "hoped, this capital prophecy might at length have pro- "cured a fair and equitable hearing; yet, alas! the remedy "came too late: the distemper was grown inveterate, and "Antichrist and Babylon were still held to be the language "of cant and enthusiasm: so that no eminence of genius, "no depth of science, could secure the writers on this pro- "phecy from contempt*."

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* See Sermon XI. on the rise of Antichrist, vol. 3.

I believe myself to have some little share in those " con-
" trary prejudices," which the Bishop allows to be " favourable
" to the cause of truth;" and to be free from many of those terrors and resentments which induced some of our forefathers to " discountenance the doctrine" vindicated by Warburton. I am conscious of never having treated with contempt and aversion any point which concerned " the
" sublimities of religion and the mysterious ways of
" Providence." Though I have many fears of " fanatics" not *yet* " armed," who may again attempt " to destroy Antichrist," I should have little reliance on the protection which their tenets or their antipathies would afford to the church or to the state, against the encroachments of Popery. I have had the advantage of reading some learned works which, under the auspices of Bishop Warburton, *have* procured " a
" fair and equitable hearing," to what he denominates " a
" capital prophecy." I do *not* call " Antichrist and Ba-
" bylon the language of cant and enthusiasm," in some of my enlightened contemporaries. I see " depth of science" in Joseph Mede; " eminence of genius" in Bishop Warburton; acuteness of reasoning and elegance of diction in Bishop Hurd; a spirit of diligent enquiry in Bishop Newton and Bishop Halifax. But I long have been, and I expect long to continue a sincere and firm advocate for Protestantism, though I entertain many serious doubts upon the evidence which has been employed to establish the favourite doctrine of Warburton and his adherents about Antichrist.

Fearing that the inconveniencies of a direct union with the church of Rome would more than balance the conveniencies, I should be sorry to see that union attempted. Suspecting, however, that the subject of Antichrist has been nearly exhausted by the learned theologians whom I have already enumerated; observing that some of the ecclesiastics who lately preached the Warburtonian lectures have gradually retreated to *other* topics than those which Warburton was peculiarly solicitous to bring into a train of equitable discussion; attentive, also, to the religious and civil concerns of Europe at the present hour, I am not sure that any signal advantage can arise to Protest-

antism from a continuance of the controversy. If it be really the wish of English Protestants to make their Roman Catholic brethren good subjects, it seems to me that a more improper method cannot be adopted than to tell them again and again—to tell them from the pulpit and the press—to tell them in a temper not very mild, and in terms not very courteous, that the spiritual head of their church is described in the sacred writings as "the man of "sin, the son of perdition, Antichrist, denying the Father "and the Son." If, indeed, I were convinced, not only that the doctrine itself is scriptural, but that my countrymen are in danger of relapsing into Popery, I might think myself bound to inculcate that doctrine argumentatively, and temperately, as at once seasonable and true. I do not, therefore, censure the zeal of other men who, for the foregoing reasons, insist upon it; and other men have no right to be offended with me, because, after perusing the same books I have not embraced the same opinions, or because I am fearful of the consequences to which the active dissemination of those opinions may lead; not *so* much from their want of conformity to obscure texts or a controverted book in the New Testament, as from their want of adaptation to what I think the present condition of society. Again, if I were to admit that Warburton is right in speculation; but were satisfied at the same time that my country is in no immediate danger of falling back into Popery, I should be inclined to preserve upon the doctrine of Antichrist the same silence which my ecclesiastical brethren are now content to preserve upon Transubstantiation and Purgatory, which continue, I suppose, to be taught among Roman Catholics, but are no longer disputed in the private families of Protestants. By zealous proselyte-makers they have rarely been introduced for these twenty or thirty years even in Polemical writings, and, if mentioned at all in the conversation of Churchmen or Dissenters, are ranked, as they were at the Reformation, among the most erroneous tenets of Catholicism. Perhaps, I should see *peculiar* reasons for holding my peace upon this topic, and leaving it with events to strengthen and illustrate the arguments which have been already adduced.

Antichrist, we are told, has not yet fallen; but he is doomed to fall; and the circumstances which are related in the Apocalypse, if I followed the common interpretation of them, might dispose me to believe that his fall is not very distant. Is it not my duty then to assist in fulfilling a prophecy which I suppose myself to understand? *Perhaps* it is. But certainly I am not required, nor even authorized, to concur in fulfilling it by *such* means as are inconsistent with other duties, which are at all times obligatory upon Christians; and, among which I must be permitted to rank the exercise of candour and charity. I must not forget, that the prophecy is allowed to relate to the *mysterious* ways of Providence. I must not forget that in scanning those ways I am a fallible being, that other men, equally fallible, but equally well-intentioned, do not see them in the same point of view, and that even though my faith be right, my practice may be wrong. If I were deliberately to undertake the office of *executing*, so far as in me lieth, what I *suppose* to be predicted, possible it is that I should be hurried into some of those extravagancies and crimes which enthusiasm engenders, and which, however efficacious they may be in destroying the kingdom of Antichrist, may eventually disturb the security of earthly kingdoms lawfully established. Probable, too, it is, that suffering my zeal to outstep my knowledge, I should now and then violate those principles of "civil and religious liberty," which, as Warburton tells us, "were vindicated at the Revolution;" and inflame "that rancour of sects and parties against one "another, which was then abated."

When we rest the general defence of Protestantism upon a principle, on the soundness of which learned Protestants differ widely among themselves—when we not only interpret the past, but anticipate the future, and thus assign to contingency nearly the strength of certainty—when that interpretation refers the ordinary effects of ordinary causes to the extraordinary dispensations which prophecy involves—a discreet believer would hardly deny the possibility of error, though his application of what is written in the Apocalypse to the Church of Rome appears to him well-founded. He may think that theologians have already said

enough to awaken the attention of Christians, and to prepare them for setting a great value upon the great proof which great events in the moral world are now furnishing for the credibility of revelation. But if it should ultimately appear that those events, however they may shake earthly dominions, yet leave the kingdom of Antichrist in possession of power, lessened, indeed, but still pernicious, he may hereafter have occasion to repent of his confidence, and to confess that the polemics whom he followed have said too much, that they have injured the cause which they meant to defend, that they have increased the animosities of Christians against one another, and brought not only Protestantism but revelation itself into additional disrepute with persons who previously were not favourable to the doctrines of either.

I do not wish to disturb the faith of any man who holds the same opinion with Warburton about Antichrist. But I should be sorry to see him maintain it in a spirit of dogmatism, and yet more sorry to observe that, by the secret operation of it upon his mind, he is induced to attack the tenets of the Church of Rome with increased severity, and to treat Roman Catholics, either as Christians, or as members of civilized society, with diminished respect or diminished kindness.

In the alarming state of public affairs both at home and abroad, persuasion seems to me the only expedient to which a good man attached to Protestantism would now have recourse, and should he happen to be wise as well as good, he will not fail to recollect that the success of his attempt to persuade will very much depend upon a right choice of time and topics. In truth, if the events now passing before us *really* are accomplishments of a prophecy: if the ways of Providence, as connected with that prophecy, are gradually becoming less and less mysterious: if the Roman Catholic, who has an equal interest with the Protestant, in examining that prophecy, and contemplating those ways, still retains his conviction that the Pope is *not* Antichrist, a Protestant may find other employments quite as laudable, quite as useful, and quite as safe, as men usually

find in the resuscitation of controversies which have been suspended without any visible mischief to the peace of communities, or the morality of individuals. He may adore, in humble silence, the mysterious ways of God. He may discern additional reasons, not only for his faith in Christianity, but for his adherence to Protestantism. He may lament what he conceives to be the blindness and obstinacy of those Catholics whom such clear and numerous proofs do not convince. But, if assuming the end proposed by the Deity, he takes upon himself to determine what are the means most efficacious to accomplish it; if, in the indications of a prophecy, rapidly and, as he would say, notoriously advancing towards a completion, he sees a warrant for strong measures of annoyance to justify a strong opinion; if he should hold that considerations of political expediency, and all the growing habits of civilized men in the social virtues of moderation and mutual forbearance, are to yield to the authority of his religious belief; if he ventures to do, what in the general course of worldly affairs would be evil, in order that good, according to his own particular persuasion upon a particular case, may come the more speedily; surely he, as a moral agent, must incur a responsibility, which, to every dispassionate and reflecting observer, would appear most awful.

In the mean time, whether a Protestant of this kind be right or wrong, the well-known tendencies of education, habit, indignation, pride, fear, and even mistaken piety, leave little or no room for us to doubt what influence such opinions, accompanied by such measures, will probably have upon the mind of a sincere Roman Catholic. His sufferings will stir up his passions, and his passions will impede the operations of his understanding. He is more likely to be confirmed in his error, than to be reclaimed from it, when the destroyers of Antichrist have added, what he thinks, intolerance and insult, to what they call, the orthodox interpretation of a prophecy, externally and recently supported by the unequivocal evidence of facts. He may feelingly acknowledge that the prophecy of "sending not peace, "but a sword," has *already* been fulfilled in a sufficient

degree to justify the foresight and veracity of the Being who uttered it, and to furnish very humiliating proofs, that a most holy name has been more than once prostituted by Christian zealots for purposes most unchristian. Without attempting to vindicate the persecuting spirit of his forefathers, he may suspect that some of his Christian brethren are rather dim in discerning, or rather slow in endeavouring to accomplish *another* prediction, which is equally clear and important, and which encourages Christians of all churches and all sects to indulge the pleasing hope that the ultimate and most blessed effect of their religion will be, "Peace upon Earth, and Good-will towards Men."

I wish the cause of Protestantism to be ever victorious over the erroneous doctrines of the Romish church. But let it not be the "victory of force atchieved by the weapons" of persecution—let us not permit what is clear in ethics to be darkened by what is doubtful in politics—instead of multiplying decisions or conjectures on the "mysterious" *counsels* of the Deity, let us contemplate and obey his explicit and direct *commands*.

I know not, my friend, whether the critical and theological subjects upon which I have thrown out my thoughts, will appear to you, or to other men, digressions. All I have to say in my own vindication is, that the contents of Mr. Fox's History, and the remarks made upon it, excited those thoughts in my mind, and that, believing them not unlikely to interest you, I have submitted them, as I shall in the sequel submit some other reflections, suggested by the same causes, to your serious consideration.

I hold, with Mr. Burke, that it was "not a fundamental part of the settlement at the Revolution for the state "to be Protestant without any qualification of the term—"for a religion to be established which was nothing but "a mere negation of some other—for a scheme to be professed by ourselves, and imposed upon others, without "any positive idea of doctrine, discipline, worship, or morals*." I maintain that in the doctrine, discipline, and

* Letter to Sir H. Langrishe.

worship of the established church no alteration should ever be attempted without the utmost caution—none, without the general approbation of its members—none, without the consent, and even co-operation of its teachers—none, without the grave deliberation of Parliament, and the formal assent of the Sovereign. But I also hold that "toleration, "being a part of moral and political prudence, ought to "be tender and *large*—that a tolerant government ought "not to be too scrupulous in its investigations, but may "bear without blame very ill-grounded doctrines—that the "disfranchised part of a people cannot think themselves "in an *happy* state, to be utterly excluded from all its di- "rect and all its consequential advantages—that the popu- "lar part of the constitution must be *to them* by far the "most *odious* part of it—and that if they who compose "the privileged body have not an interest, they must but "too frequently have motives of pride, passion, petulance, "peevish jealousy, or tyrannick suspicion, to urge them to "treat the excluded people with contempt and rigour*."

Mr. Fox cannot be supposed to have bestowed much attention upon the writings of theologians, and perhaps he little suspected that men who agreed with him upon political subjects, held notions very different from his own upon the extent of toleration. But it has fallen in my way to know, and it is my duty as a lover of truth to state, that to praise for vigilance and jealousy against the church of Rome, our low-church fathers were equally entitled with the high-church party, and that the blame of continuing that vigilance and that jealousy, when they are not equally necessary, ought to fall with equal weight upon the successors of both. The old Puritans were perhaps more indignant against the Papists than any class of churchmen. But the more enlightened, and I wish it were in my power to add, the most numerous class of Dissenters†, in our own

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* Letter to Sir H. Langrishe, p. 312.

† I have often had occasion to observe that statesmen can contrive

days, have formed more exact and more consistent opinions upon the principles of toleration. As a most unfeigned

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contrive to gratify the revenge or the vanity of religious parties, without affording, or meaning to afford to them substantial relief; that what Dissenters suffer, does not always add to the security of the church; and that what the church loses, is not always an acquisition to the cause of religious liberty. My opinion is confirmed by some striking occurrences in the reign of Charles and James the Second, and abundant are the materials which they supply for reflection to vigilant and impartial observers, both within and without the pale of our ecclesiastic establishment.

"From the insurrection of the fifth monarchy men, Clarendon "and the ministry took occasion to infer the dangerous spirit of "the Presbyterians and of all the Sectaries: But the madness of "the attempt sufficiently proved that it had been undertaken "by no concert, and never could have proved dangerous. The "well-known hatred, too, which prevailed between the Presby- "terians and the other sects, should have removed the former "from all suspicion of any concurrence in the enterprise. But "as a pretence was wanted, besides their old demerits, for jus- "tifying the intended rigours against all of them, this reason, "however slight, was very greedily laid hold of.

"The Catholics *dreaded an entire union* among the Protest- "ants. Were they the sole Nonconformists in the nation, the "severe execution of penal laws upon their sect seemed an infal- "lible consequence; and they used therefore all their interest to "push matters to extremity against the Presbyterians, who had "formerly been their most severe oppressors, and whom they now "expected for their companions in affliction.

"The church party had, during so many years, suffered such "injuries and indignities from the sectaries of every denomination, "that no moderation, much less deference, was upon this occasion to "be expected in the ecclesiastics. Instead of enlarging their "terms of communion, in order to comprehend the Presbyterians, "they gladly laid hold of the prejudices which prevailed among "that sect in order to eject them from their livings.

"A

and most anxious well-wisher to our ecclesiastical establishment, I should rejoice at the prevalence of the same

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" A combination had been entered into by the most zealous " of the Presbyterian ecclesiastics to refuse the subscription required " by the Bill of Uniformity, in hopes that the bishops would not " dare at once to expel so great a number of the most popular " preachers. The Catholic party at court, who desired a *great* " *rent* among the Protestants, encouraged them in this obstinacy, " and gave them hopes that the king would protect them in their " refusal. The king himself, by his irresolute conduct, contributed " either from *design* or accident, to encrease this opinion."—"About " two thousand of the clergy, in one day, relinquished their *cures;* " and to the great astonishment of the court, sacrificed their " interest to their religious tenets. The church enjoyed the plea- " sure of retaliation; and even pushed, as usual, the vengeance " further than the offence." (Hume's England, chap. i. reign of Charles II. 4th edit. 1762.)

From this statement it appears that the Catholics, who were favoured by the King, concurred with Churchmen in depressing the Presbyterians, and at the same time encouraged the Presbyterians in resisting the terms proposed by the Church. It will now be seen that in order to undermine the Church, the same king adopted measures which in appearance were favourable to the Dissenters. " Under the pretence," says Hume, " of easing the " Protestant Dissenters, Charles and the Duke of York agreed " upon a plan for introducing a general toleration, and giving the " Catholics the free exercise of their religion; at least, the exer- " cise of it in private houses. The two brothers saw with plea- " sure so numerous and popular a body of the clergy refuse con- " formity; and it was hoped that, under shelter of their name, " the small and hated sect of the Catholics might meet with favour " and protection."

Let us go on to the next disastrous reign—

" James was become a great patron of toleration, and an " enemy to all those persecuting laws which from the influence of " the Church had been enacted both against the Dissenters and " Catholics.

principles among men whose erudition, virtue and piety I must ever reverence. I deprecate the day in which the

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" Catholics. Not contented with granting dispensations to par-
" ticular persons, he assumed a power of issuing a declaration of
" general indulgence, and of suspending at once all the penal
" statutes by which a conformity was required to the established
" religion.

" In order to procure a better reception for his edict of
" toleration, the king, finding himself opposed by the Church,
" began to *pay court* to the Dissenters; and he imagined *by*
" *playing one party against another, he should easily obtain*
" *the victory over both*; a refined policy which it much exceeded
" his capacity to conduct. His intentions were so obvious, that
" it was impossible for him ever to gain the sincere confidence
" and regard of the Nonconformists." Mr. Hume, with his usual sagacity, assigns reasons, " for which all the King's favours
" must have appeared to every man of judgment among the
" sectaries insidious"—" yet such was the pleasure reaped from
" *present ease*, and such the animosity of the Dissenters a-
" gainst the Church, who had so long subjected them to the
" rigours of persecution, that they every where expressed the most
" *entire duty* to the King and compliance with his measures; and
" could not forbear *rejoicing extremely in the present depression*
" *of their adversaries*." (Ch. i. James II.)

Such were the ill-founded and short-lived triumphs of Churchmen against Dissenters, of Dissenters against Churchmen, and of Catholics, as it appears from the sequel of our history, against both. But what is the lesson of sound policy, which well-informed and well-intentioned men should learn from these events? It is purely to cherish a spirit of mutual forbearance and good-will, to abstain from severity against others, lest from the dark and shifting views of state-craft they should recoil upon ourselves—to unite in protecting the rights of religious freedom from the insidious favour and the rude hostility of worldly-minded men, who convert our virtues and weaknesses, our love and hatred, our

hopes

intolerance of churchmen should furnish our adversaries with the opportunity for objecting to us, "What so pure "as some of the morals included in some theological sys- "tems? What so contrary to the spirit of Christianity, "and to the well-being of society as some of the practices "to which the injudicious or intemperate defence of those "systems gives rise*?"

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hopes and fears, into instruments of wicked purposes, which are rarely detected, till it is too late to oppose them.

Under the harsh sentiments which a numerous body of modern sectaries are wont to avow against modern Catholics, there may be lurking "an opinion" as Mr. Hume, in his Essay on the Parties of Great Britain, calls it, "not only of affection, but "interest," not only a fondness for their own peculiar tenets, but a jealousy of the *sway* which teachers acquire over their followers, from the propagation of such abstruse and mysterious dogmas, as sooth the mind with a consciousness of merit in the prompt, indiscriminate and entire submission of reason to faith. In our own days I should think it a perilous experiment for any minister to play off the prejudices and passions of those sectaries against Roman Catholics, and the Sectaries, who are by themselves denominated "rational dissenters." At the same time I should think those Catholics and those Dissenters very short-sighted, if for the sake of some immediate and temporary gratification, they should rejoice in the success of any measure which is directly or indirectly injurious to the safety or even the respectability of our own ecclesiastical establishment. If all parties were disposed to take large and just views of their interests in society, and their duties from religion, they would find that in forbearing to do injury to others they most effectually provided for their own honour and their own security—They would not promote the bad, but unknown designs of other men, and they would aim at no advantages for themselves, which an enlightened and virtuous member of the community would be inclined to oppose.

* See Hume's Natural History of Religion.

"To fear where no fear is" has been represented to us as a mark of that weakness which by the constitution of the moral world stigmatises and ultimately defeats the aims of wickedness. But will a good man hastily impute deliberate perjury to a class of men, who in the ordinary concerns of life have never manifested the slightest disrespect to the sanctity of an oath? Will he suppose that among the descendants of families, most respectable for their antiquity and their opulence, even the sense of honour is utterly extinguished? Will he to-day impose a strong pledge for their loyalty, and to-morrow declare that they who gave it are incapable of making any long resistance to the illusions of casuistry, or the instigations of bigotry, and that without hesitation or remorse they will be guilty of ingratitude and perfidy to their protectors, rebellion to their governors, and mockery of their God*? When required to look back upon their peaceable and inoffensive behaviour for more than forty years, will he endeavour to bring down odium upon them by the revival of refuted assumptions, or antiquated, and exploded tales? When entreated to contemplate the galling effects of long-continued and much-abused restraints, will he maintain

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* The spirit in which some men talk of the distrust which Protestants ought to cherish against the insincerity of Roman Catholics in taking oaths, reminds me of what passed in the trials of Grove and Pickering. "Scrogges, the Chief Justice, instead "of being counsel for the prisoners, as his office required, pleaded "the cause against them, brow-beat their witnesses, and on every "occasion represented their guilt as certain and uncontroverted! "He even went so far as to affirm, that the Papists have *not the* "*same principles* which Protestants have, and therefore were "not entitled to the common credence, which the principles and "practices of the latter call for. When the jury brought in their "verdict against the prisoners, he said, *You have done, Gentle-*"*men, like very good subjects, and very good Christians, that* "*is to say, like very good Protestants.*" (Cap. v. of the reign of Charles II. Hume's History, 1762.)

that the power of self-respect to appreciate insult, of self-preservation to discern injury, belongs exclusively, or even pre-eminently to his Protestant brethren? Will he, "from "generation to generation" persist in "visiting the sins of "the fathers upon the children," who hate us only because they are conscious of being themselves hated for offences not their own? Will he not rather wish to "show mercy "unto thousands," who if they were encouraged to "love" the law would find it their interest as well as their duty to "keep its commandments?" As a citizen, as a man, and as a Christian, will he not be disposed to "comfort them again "now after the time that he" and his progenitors have "plagued them, and for the years wherein they have suf-"fered" the most humiliating and the most mortifying "adversity?"

The principle upon which alone any legal restraints imposed upon the Roman Catholics can be justified, has been stated by no writer with more precision and more perspicuity than by Dr. Paley. "If the members of the "Romish church," says he, "for the most part adhere to "the interests, or maintain the right of a foreign pretender "to the crown of these kingdoms; and if there be no way "of distinguishing those who do from those who do not "entertain such dangerous prejudices; government is well "warranted in fencing out the whole sect from situations "of trust and power. But even in this example it is not "to Popery that the laws object, but to Popery as the "mark of Jacobitism, which is the sole cause of suspicion, "and the sole justification of those severe and jealous laws "which have been enacted against the professors of that "religion, and which, as it was accidental in its origin, so "probably it will be temporary in its duration; and these "restrictions ought not to continue one day longer than "some visible danger renders them necessary to the pre-"servation of public tranquillity*." What the visible dan-

* Paley on Religious Establishments, p. 584.

ger now is, or in what quarter any invisible danger may be lurking, are points upon which no satisfaction has yet been given to my mind by the moans of Mr. Abraham Plimley, the prattle of Mr. Chancellor Perceval, the rant of Mr. Privy Counsellor Duigenan, or the yell of No Popery. Jacobitism has ceased, and the Pope remains. But his power is considerably diminished, the political prejudices of his adherents are no longer supported by the hopes, or inflamed by the resentments which Jacobitism once inspired, their military connection with foreign potentates is nearly dissolved, the most respectable part of them are neither unable nor unwilling to derive some advantage from the general diffusion of knowledge, and it were an outrage upon all probability to maintain that their advice, authority and example should not have some degree of salutary influence upon the lower classes of persons, who, from their participation of the same common sufferings in the same common cause, are in a peculiar manner attached to their superiors, and dependent upon them. If external circumstances give us no reason to apprehend danger from the Roman Catholics, are we likely to find it in the internal structure of the human mind? I think not. We rarely do good to our fellow-creatures without experiencing a subsequent feeling of kindness to those whom we have endeavoured to please. As rarely do we receive good without mingled sentiments of respect and gratitude, when the obligation is conferred upon us, not by individuals with whom pride may induce us to compare ourselves, but by governments and communities, to the dignity of which our own importance bears no proportion, and to the strength of which we can look up for protection without any consciousness of personal abasement. Mutual forbearance, if the experiment were made, would gradually lead to mutual confidence, and they who persist in rejecting our faith may by our practice be persuaded to imitate our charity. "Do "the Roman Catholics," says a very sensible writer, "hope "to conciliate those whom they stile their Protestant breth- "ren, by telling them that they are not Christians?" No, most assuredly, for it were a foul and false accusation. But do the Protestants in their turn hope to conciliate the Ca-

tholics by telling them that, because their fathers were persecutors, they are themselves inclined to persecute, and therefore ought to be scantily and jealously tolerated—that neither experience nor reflection has softened that bigotry which formerly was an object of just and general terror—and that the church of Rome even in its decline will by its secret emissaries employ the same machinations, and aim at the perpetration of the same outrages by which it disturbed the repose of the Christian world, when it was in the zenith of its power?

Much as I respect the abilities of Dr. Milner* and of the late Mr. Archdeacon Sturges, I shall ever lament the controversy in which they were engaged, because I know the effects which it has produced among some weak men in the church of Rome, and some very wise men in the church of England. Upon the same principles of prudence and moderation I most pointedly condemn the rashness and uncharitableness of those persons who lately sent forth Ward's Controversy of Ordination, which was first printed in London in 1719, and republished in Dublin in December 1807. An answer to Ward's fallacious reasonings and invidious statements has been written by the Rev. Thomas Elrington, D. D.† late Senior Fellow of Trinity College,

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* I must observe that Dr. Milner was not the aggressor, and that he sustained the defensive part with great acuteness and great spirit. But upon the revival of what controversialists have written about the indignities and wrongs which our Protestant and Roman Catholic forefathers inflicted on each other, I hold generally, and at this time I hold more especially, Δὶς κράμβη θάνατος.

† After writing this sentence I had the satisfaction to meet with Dr. Elrington's judicious Reflections on the appointment of Dr. Milner as the political Agent of the Roman Catholic Clergy in Ireland, printed at Dublin, in 1809.

As a well-wisher to the Petition of the Roman Catholics, I should be sorry to see a great political measure obstructed by

Dublin. It was put into my hands by a prelate*, whose solid judgment and unsullied integrity will ever entitle him to my esteem and confidence. In addition to the praise which is due to Dr. Elrington as a faithful narrator and a judicious reasoner, I ought to state that the part which he took in the controversy was defensive, that he meant to reply to a book, the contents of which must at this season have been most inflammatory to the minds of Catholic zealots in Ireland, and that by replying to it with so much ability and so much discretion he has discharged an important duty to that establishment in which he is a most meritorious teacher.

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scholastic distinctions, by invidious references to the reigns of Mary and Elizabeth, or by harsh, and, I think, most unmerited reflections upon the character of William the Third. Let the professions of allegiance which the Roman Catholics make be clear, distinct, unequivocal, conceived in the spirit, and expressed in nearly the words of the celebrated Remonstrance signed by the English Roman Catholics, in 1640, and transmitted afterwards by Walsh to the Irish Catholics. After serious and temperate discussion among themselves, and with their parliamentary friends, "upon the appointment of Bishops to fill the vacant Sees in "Ireland," let them, without cavilling and without tergiversation, consent to such interposition of the temporal power as the circumstances of the times have rendered necessary—such, as without ensnaring their sincerity, or impeding their real usefulness in spiritual concerns, may calm the fears and soften the jealousies of their Protestant fellow-subjects—such, as upon the plainest and soundest principles of mutual good-will and fair dealing, may "enable their Governors to be satisfied of the loy-"alty of the person to be appointed, and" therefore "is just, "and ought to be agreed to." (See Elrington's Reflections, p. 35 to 48.) Heaven forbid that a very great and a very good cause should be cramped by the subtleties of casuists, or defeated by the prejudices, the resentments, and the ill-timed, though perhaps well-meant, zeal of a few individuals.

* Dr. Nathaniel Alexander, Bishop of Downe.

Having pursued a train of reflections which one part of Mr. Fox's History suggested to me, I shall now return to the British Critic.

Among the aphorisms selected by the Reviewer from Mr. Fox's History this is the third: "The Lawfulness of "the Assassination of Tyrants, meant to be honoured by "the Greeks with the name of Tyrannicide, rests partly on "the fact that cases may exist in which the office of the "sword of justice may be undertaken by another." "If "they have existed," Mr. Fox says, "they have been in "instances where trial has been wholly out of the question, "as in that of Cæsar and other tyrants." "In page 10 he "*half meets*," says the Reviewer, "the point of assassina-"tions of this description being *justifiable*, but with an *evi-"dent bias* to the affirmative. An opinion of his probably "formed, or at least first avowed, after his visit at Paris, "in the last peace, and his very honourable and distin-"guished reception at the Thuilleries."

As the Reviewer has described that "combination of "circumstances which called upon him for *particular* care "in the account he was to give of Mr. Fox's History:" as he has farther professed to "feel that it was no common "cause or person on which his literary duty at that in-"stant called him to sit in judgment:" as he has farther still declared that "in his strictures on Mr. Fox, as a writer, "the character of Mr. Fox the statesman had not been *men-"tally* adverted to;" I must ascribe the passage just now quoted to that "flutter and hurry of spirits, which," as Mr. Hume says, in his Essay on the Standard of Taste, "attend "the first perusal of a piece, and which confound not only "the genuine sentiment of beauty," but, as I would add, the import of propositions, and the principles of opinion. The Reviewer certainly meant to impress on the minds of his readers that Mr. Fox was generally an advocate for regicide, "honoured* by the Greeks with the name of

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* The irony of the Reviewer, however amusing to Partizans, will not be quite satisfactory to scholars. They who understand

"Tyrannicide"—that he transferred to modern times his approbation of what happened to "Cæsar and other ty-"rants" real or supposed in times of antiquity—that he insinuated, by his *bias* to the affirmative, something more and something worse than he dared to affirm—that he might possibly have formed, though he did not avow, his opinion before his late visit to Paris—that, by the contagion of French example, and the blandishments of French adulation, he had been induced to avow it, on his return from the French capital—and that, in opposition to his own repeated declarations in Parliament, he probably was not displeased with the destruction of Louis XVI. under the guillotine. Less than this scarcely any reader can understand from the words of the Reviewer, and more than this is not necessary to bring down upon Mr. Fox the detestation of every enlightened statesman, every honest man, and every civilized people in Europe.

Instead of compressing Mr. Fox's opinion into the form of an aphorism, I shall endeavour to collect what it really was from the whole of the passage to which the Reviewer has adverted. "Strafford," says he, "was a great delin-"quent, and well deserved the severest punishment. But "nothing short of a clearly proved case can justify or "even *excuse* a departure from the sacred rules of cri-"minal justice; for indeed it can rarely happen that the "mischief to be expected from suffering any criminal, "however guilty, to escape, can be equal to that resulting "from the violation of the substantial rules of criminal "proceedings; to which the innocent owe the security of "all that is dear to them." Thus far Mr. Fox seems to me

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the manners, or the governments, or the language of Greece, must be aware that for Regicide, as *distinguished* from Tyrannicide, there is no Greek word to be found or even expected. The distinction is entirely modern, and every modern Regicide, whether justly or unjustly, considers, or at least *professes* himself a Tyrannicide. I know not that any modern language has definitely assigned an *honourable* sense to the word.

to have said nothing to which any zealous loyalist, or any virtuous man can object. Whether the criminal be a subject or a king; whether he be more or less guilty; Mr. Fox's proposition *is so large* as to show that the mischief to be expected from his escape is less than the mischief of punishing him by "a departure from the sacred rules "of criminal justice," when recourse can be had to those rules. Now, for the conviction of subjects, laws are generally provided; though, in some cases, as where bills of attainder have been passed in England, the offenders have been punished by an ex post facto law; and in Rome the associates of Cataline were put to death without the authority of an express law; and the necessity of the measure was the only plea that could be urged to justify or even excuse the severity of it. In regard to sovereigns, no state, in point of fact, has ever consigned, or, I hope, ever will consign, supreme power to any person upon conditions to the violation of which is *explicitly affixed* any penalty of exile * or death. Hence, in bringing a sovereign

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* I should have added dethronement, if the *privilege of union* among the Arragonese had not entitled them, under certain circumstances, to withdraw their allegiance from the reigning Sovereign, and to elect a successor. Dr. Robertson, who says that "he had not found, in any author, whom he had an opportunity "of consulting, the constitutional form of the oath of allegiance," yet acknowledges "the spirit of it to have been agreeable to the spirit "of the Arragonese constitution;" and thinks it "probable that the "many authors, who had produced the ancient Spanish words, in "which it was expressed, had taken it from some writer of credit, "whose work had not fallen into his (i. e. Robertson's) hands."

"In the ninth century, when the provinces of Navarre and "Arragon which Charlemagne had conquered had formed themselves into the kingdom of Navarre, and chosen for their king "Inigo, Count of Bigorre, "a sort of Magna Charta was, at his "election, drawn up for securing the liberty of the people from "all tyrannical extensions of the King's prerogative. The people

to trial, the most formidable difficulties arise. The proof of his guilt must be established by the letter of regulations, angrily and recently introduced in consequence of crimes that were previous to them; or by circuitous and precarious deductions from the general laws of self-preservation, or the general principles of government as instituted for the pro-

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" of Navarre afterwards negligently lost the benefit of this, but " the Arragonese, being wiser, would never give it up, and to " this day enjoy many privileges founded on that original compact, " which was called from the place where it was agreed upon, the " *Fore* of *Sobrabe*." (See Vol. I. of Puffendorf's introduction to the History of the principal States of Europe; page 39 of Sayer's translation.)

If we descend to later times we shall find the language of Moreton, in his embassy to Queen Elizabeth, yet more emphatical: " Gens Scotorum, cum ab initio libera esset, reges se jure sibi " creavit, ut imperium populi suffragiis mandatum, si res posce- " ret, eisdem suffragiis adimere posset. Hujus quoque juris expres- " sam habent imaginem, quæ, in Regno ineundo usurpantur cere- " moniæ * * * * * idem vero apertissime potest intelligi, ex " inoffenso veteris juris tenore, ex quo apud Scotos regnari cæptum " est, ad nostram usque memoriam servato, cum nemo, interea, " hoc jus non modo abrogare, sed nec convellere, aut ulla in parte " imminere tentarit: cum tot Reges, quos enumerare longum " esset, majores nostri Regno exuerint, exilio damnarint, carceri- " bus coercuerint, supplicio denique affecerint! nec unquam " tamen de legis acerbitate minuenda mentio facta est." (Buchanan " Rev. Scotic. lib. xx. p. 398.) We read the foregoing words in the twentieth book of a History written by Buchanan, whom Selden calls " that hater of monarchs who had a malicious dislike " of giving titles and attributes of great honour to Princes." (See Selden upon Titles of Honour, chap. vi. p. 1.)

We must observe that, according to Moreton's own account, the conditions imposed, even in barbarous ages, on the Scottish kings, do not appear to have been expressed in any regular formulary; and as to the symbolical import of ceremonies which Moreton has not explained, I can form no opinion upon it.

tection of subjects. The mind, upon such occasions, is left without any guidance from written and definite rules. It finds only doubtful and imperfect analogies in precedent, and, if the passions of resentment or fear did not impel men to decision, their reason would seldom permit them to decide rigorously against an accused and captive king*. All this

* In endeavouring to show that "kings are under the laws, "as well as their subjects, and that regal guilt, from its greater "consequences ought to be corrected with severer infliction," Milton quotes the opinions of Luther, Zuinglius, Calvin, Bucer, Peter Martyr, Paræus, Gilby, and Christopher Goodman; see Milton's Tenure of Kings and Magistrates. "These authorities," says Milton's biographer, "unquestionably demonstrate that the res-"ponsibility of kings to a human tribunal is a doctrine which has "not been uniformly considered as incompatible with christian "theology: but their support cannot be extended to the full as-"sertion in the title of this piece, "that it is lawful for *any who* "*have the power* to call to account a tyrant;" &c. though this assertion be a little qualified by the subsequent words, "*and after* "*due conviction*" to depose and put him to death." (Symmons's Life of Milton, p. 252, 3.) In order to establish the lawfulness of putting a wicked king to death, Milton requires not only due conviction, but "that the ordinary magistrate should have neglected or "denied to do it." Many enlightened patriots would disagree with Milton upon the circumstances which would have led him to call the conviction of a tyrant *due*. But it is proper for us to remember that Milton's opinions upon the lawfulness of trying a wicked king are very distinct from the tenets of those persons, if such there be, who would maintain the right of destroying him by assassination. The above-mentioned work of Milton was intended for an answer to the objections of the Presbyterians—the very men, who, in common with the Royalists, condemned the execution of Charles, and the progenitors of the very men, who in our own days have been reproached for a crime which those progenitors did not

Mr. Fox understood quite as well as the Reviewer or myself, before he met with what is called " an honourable and

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not commit, and accused of retaining that principle of tyrannicide, which they neither have inherited, nor, so far as my observation extends, are disposed to adopt.

In the reigns of George the First and Second, some orthodox tories wished those monarchs whom they considered as usurpers, to be dethroned, even at the *hazard* of seeing their dethronement followed by their death. The presbyterian whigs shewed themselves loyal subjects through the course of two rebellions which broke out in those reigns, and they seemed to be satisfied with that form of monarchical government, which was settled at the revolution. Upon the general doctrine of passive obedience, they never appeared to differ materially from Mr. Hume, who in his remarks on the debates of Parliament in 1675, has discussed the question in terms so precise, and upon grounds so equitable, that no sophistry can deface his statement—no legal, or theological, or metaphysical distinctions can impair it—no legitimate reasoning can overthrow it—no ingenuity can improve it by addition or correction. From a change, not perhaps for the better, in their peculiar situation as sectaries—from the novel and important discussions to which our disputes with America gave rise, and from a favourite and fashionable custom of viewing political subjects through the medium of metaphysical abstraction, *some* of them may, at a later period, have been inclined towards speculative republicanism. But in no book I ever read, and in no conversation I ever heard, have they attempted to lay down *rules* for the deposition or personal destruction of wicked kings. Practically they have not been proved to be guilty of treason, and even of sedition they have not been convicted, except in two or three instances, where writings were interpreted without any striking marks of candour, and sentences pronounced without any unusual relaxation of severity. If their general opinions, then, be *not* in their direct and obvious tendency, dangerous to a free and mixed government, why are they to be treated with far less kindness than they *formerly* experienced from a dynasty, which their forefathers assisted

" distinguished reception at the Thuilleries;" and though to the popular and even Parliamentary statements of some

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assisted in raising to the English throne, and supported against the armed and unarmed partisans of the Stuart line? If they *be* dangerous to such a government, but in their remoter and more doubtful tendencies *only*, does the history of mankind give us reason to believe, that they will be weaned from their errors by the frowns of titled and pensioned courtiers, the taunts of mercenary witlings, the anathemas of frantic mystics, or the vulgar and venomous execrations of a deluded and inflamed rabble? Men, however, there are, to whom it does not seem incompatible with prudence or equity, to hunt down a body of their fellow-subjects, who are making no inconsiderable progress in general knowledge, who have begun to share with their countrymen in the praise, not only of scientific research, but of polite literature, and who, from their extensive dealings in commerce, must be useful members of a community the political interests of which are now interwoven closely with the causes of its commercial prosperity.

If for sentiments so unfashionable and so unpopular, a moderate churchman were compelled to look for shelter in the authority of high example, he might find it surely in the good humour, good sense, and good spirit of Bishop Morley. " When " that prelate was consulted by the Mayor of a country cor- " poration what method he should take to root out the fanatics " in the year of his mayoralty, the Bishop, now grown old, " first preached friendliness to him by ordering him a glass of " Canary as oft as he started the question in company; and next " admonished him, when alone, to let those people live quietly, " in many of whom he was satisfied there was the true fear of " God, and who were not likely to be gained by rigour and " severity." (Kennet's Register, page 816, quoted by the learned Mr. Zouch in the life of Isaac Walton, page 43.)

Thus did an ecclesiastic, venerable from station, and wise from experience, repress the insolence of office and the harshness of intolerance; and let us not forget, that Bishop Morley spoke

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conversations which were said to have passed there, it is in my power to give the most direct *contradiction*, I must

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of Dissenters, who in their love of literary attainments and their discharge of social duties, were far inferior to the sectaries to whom I advert.

Among the advantages of a steady, but mild and upright government, it is always *intelligible*, as well as acceptable, to generous and reflecting people. It conquers misrepresentation by the testimony of facts. It drives away the unsubstantial visions of theory, by the broad daylight of experience. It satisfies, when contemplated in its principles, and captivates, when felt in its administration. Little does it leave us to fear from studied and plausible refinements, the fallacy of which has been detected in a country where they had been decorated by eloquence, fortified by philosophy, and addressed to the judgment and passions of the multitude with violent, but temporary and baleful effect. Under such a weight of evidence the stubbornness of party zeal sinks down, subdued and exhausted; and the intellectual pride of man, instead of roving after discoveries, or panting for changes, is abashed at the recollection of the past, and dismayed at the prospect of the future.

This is not a season for partial retrospects, or declamatory exaggerations. For, terrible as are the outrages which we have to deplore, the blame is to be laid, largely, indeed, but not exclusively, upon that which is called French philosophy. If there had been no *previous and just* grounds of complaint from the want of sympathy and mutual dependencies between the different orders of the state—none, from artificial obstructions to the acquisition of private property—none, from the profuse expenditure of the public revenue—none, from burthensome taxes—none, from unnecessary wars—none, from the injudicious, or the corrupt, or the oppressive administration of government, metaphysicians might have invented their systems, experimentalists might have boasted of their projects, and demagogues might have poured forth their invectives, without any signal or lasting mischiefs to the monarchy, or to the nation. Enough then has happened

own that, not having heard of any discussion between Mr. Fox and Napoleon upon the subject of assassination,

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happened to supply men of all parties and of all classes with valuable instruction, if they really wished to be instructed. Enough has happened to put Governors and the governed on their guard, against the extremes of that stiffness, which bends not to unwelcome realities, and that precipitation, which catches at fair appearances. Enough has happened to convince me that the preservation of the public peace among ourselves is *peculiarly* dependent upon the encouragement of public union and concord. If, therefore, churchmen could be brought to believe that the more enlightened part of the sectaries retain the use of common sense upon political topics, it would hardly be denied that the recent and melancholy experience of a neighbouring state must have *disciplined* their minds into some degree of sober and serious reflection. It is my wish to conciliate, rather than to provoke them. It is my opinion that no harm would be done if churchmen, acting towards them in the true spirit of Protestantism, would endeavour to convince them that in the safety and prosperity of the established church, Sectaries would find the most effectual barrier against the jealousies and prejudices which they entertain against each other.

Base it were at such a juncture, if I should permit any personal considerations to restrain me from communicating to you, dear Sir, or to the public the result of my own long-continued, various, and intense observation upon the sentiments of individuals, and the characters of classes. Let me then confess, even at the hazard of giving offence in some quarters by the confession, that English Presbyterians and English Catholics do not appear to me the most numerous, or the most formidable enemies now to be found among us, to the church, or to the state. In all probability other persons to whom I advert, have, for the *present*, very imperfect and confused views of the extravagancies into which themselves, or their successors, may hereafter be precipitated, by what they might think favourable opportunities for seizing that ascendency to which they are supposed by many vigilant

I am quite unable to show how far Mr. Fox was confirmed in his former notions, or beguiled into new ones, by the

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vigilant and dispassionate observers to aspire. Heaven forbid that the arm of the secular power should be raised against them, or the sacred rules of toleration violated, while they are content to multiply converts, without transgressing the laws. Yet, as slaves to their own prepossessions and passions, or dupes to the wiliness of other men, they may become dangerous instruments in disturbing those ecclesiastical and political systems which have been long, and I add with equal sincerity and confidence, most happily established in this kingdom.

"The worst of madmen," says a poet of our own country, "is a saint turned mad;" and, if I were asked from what quarter the greatest havoc to human virtue and human happiness was to be apprehended, I should say from a host of armed fanatics, cajoled and instigated by leaders, who take King Jesus for their watchword, while they "say in their hearts there is no God."

Much as I condemn the levity and profaneness of Voltaire, I am sometimes pleased with the shrewdness of his observations upon political subjects, and I believe that the Sovereigns of Protestant states have a real and great interest in attending to the cautions which are suggested to them in the following passage:

"Arrêtez vous un momens près du cadavre exhumè de ce "celebre Empereur Henri IVme. plus malheureux que notre "Henri IVme. Roi de France. Cherchez d'ou viennent tant "d'humiliations, et d'infortunes d'un côtè, tant d'audace de l'au- "tre, tant de choses horribles reputèes sacreès, tant de Princes "immolès a la Religion: Vous en verrez l'unique origine dans "la Populace; c'est elle qui donne le mouvement a la Superstition. "C'est pour les Forgerons, et les Bucherons de l'Allemagne, que "l'Empereur avoit paru pieds nus devant l'Evêque de Rome; "c'est le commun Peuple, esclave de la Superstition, qui veut "que ses Maîtres en soient-l'esclaves. Dès que vous avez souffert "que vos sujets soient aveuglès par la Fanatisme, ils vous feront "a parôitre fanatique, comme eux; et si vous secouez le joug, "qu'ils

arguments or the courtesies of the French Emperor. I must, however, be permitted to add that, *unless* the Reviewer has received some particular information which has not reached the generality of his readers or myself, he should have been content with opposing Mr. Fox's aphorisms, as expressed in Mr. Fox's History, without communicating to the public a vague suspicion that Mr. Fox had made Napoleon the keeper of his conscience, and that the gratification of his vanity had overcome his scruples, his discretion, his loyalty, and his humanity. If Mr. Fox, during his stay at Paris, had taken up new and dangerous opinions on the subject of Tyrannicide, did he, on his return, try his skill in what to him was a new, and what, in him and every other minister would be the despicable, trade of dissimulation? Did he so far conceal his bias towards assassination, as to elude the suspicions of a sagacious sovereign, by whom he was called to a most honourable office, and of a Parliament, before which he had occasion to speak upon the most important questions of foreign and domestic policy?

Mr. Fox thus proceeds: "if such cases ever existed, "they must have been in instances where trial was wholly "out of the question, as in that of Cæsar and other ty- "rants. But when a man is once in a situation to be tried, "and when his person is in the power of his accusers or "Judges, the danger to the community *never can* be such "as to justify the violation of the fundamental rules of "criminal proceedings." Mr. Fox, also, expresses a very strong *doubt* whether such violation can be justified by *any other circumstance whatsoever*. In the intermediate passage, where he speaks of Cæsar and other tyrants, I find the

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"qu'ils portent, et qu'ils aiment, ils se soulevent. Vous avez cru "que plus les Châines de la Religion, qui doivent être douces, "seraient pesantes et dures, plus vos peuples seraient soumis: vous "vous êtes trompè: Jls se servent de ces châines pour vous gêner "sur le Trône, ou pour vous en faire descendre." (Essai sur les mœurs et l'Esprit des Nations, tom. ii. cap. 46.)

want of Mr. Fox's usual perspicuity and precision. The topic *immediately* before him was, how far self-defence, or any other cause could warrant or palliate the breach of *judicial rules*. But, "in the case of Cæsar and other ty-"rants," trial, according to his own account, "was out "of the question." In such a case judicial rules could neither be preserved nor violated; and therefore the argument drawn from cases in which there is a trial, is not directly applicable to cases in which there is no trial. His mind had passed rapidly from Strafford, who was a subject and a minister, to Cæsar and other potentates, whom he calls tyrants—from Strafford, who had perished under an *unjust* sentence, to Cæsar and other persons who had perished *without* any sentence at all; and to whose case, therefore, considerations founded upon the "departure "from the sacred rules of criminal justice," were, in the technical language of lawyers, irrelevant. He has stated, but not with sufficient perspicuity, a case distinct from the general rule. But let this pass. What Mr. Fox's opinion was upon the reasons which might justify or excuse the destruction of Cæsar and other tyrants, who were not brought to trial, Mr. Fox has not told us, nor perhaps thought himself required to tell us, with the clearness and correctness which we are accustomed to find in his reasoning. In truth, he glanced quickly and shortly upon the case of tyrannicide, and eargerly returned to the subject from which he set out, viz. "Departure from the sacred rules "of criminal justice." In regard to Charles, Mr. Fox*, *opposes*, as unsatisfactory, the best justification of his death, that, "while he lived, the republic would never have been "secure." He does not consider even the danger of the republic as sufficient to warrant more than the imprisonment or banishment of the King. He shows the futility and inconsistency of every plea drawn from the example afforded by his death; and, without justifying the mode adopted by Cromwell and his adherents, in subjecting their monarch to trial and to a public execution, he is content to

* Page 13.

call it less dishonourable than the secret assassination of Edward II. Richard II. Henry VI. and Edward V. His commendation, if such it should be called, is bestowed, not upon the justice, but the *publicity* of the act.

But while we reprobate the cruel persecutors of the cruel Strafford, let us not forget that, in the reign of Charles II. "intimidation, corruption, and illegal evidence were em-"ployed to obtain a verdict against Sydney; and that con-"victions against evidence, sentences against law, enormous "fines and cruel imprisonments, were the principal engines "employed for breaking the spirit of individuals, and fitting "their necks for the yoke *†."

I will not deny that the words "justify or excuse," may, without any great violence of construction, be applied to Mr. Fox's sentence upon the fate of "Cæsar and other ty-"rants." But shall it be said that persons, who approve of the manner in which Cæsar was put to death, are necessarily bad citizens or bad men? Was not the deed applauded in ancient times by the humane Cicero‡, the virtuous Marcus

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* Mr. Fox's History, page 55.

† The cruelty of this execrable tyrant in other respects ought not to be forgotten. "During the Usurpation men had "been convicted of high treason, but simple death was the ut-"most infliction, and the axe or the halter put the speediest "period to the existence of the criminal. But on the restoration "of the monarchy, the old barbarity of the laws was admitted "in its full horror. The bowels were torn from the yet breath-"ing sufferer, and the public feeling was either disgusted or hard-"ened by the spectacle of torture, or the most ferocious punish-"ment." (Symmons's Life of Milton, p. 430.)

‡ "Cæsare interfecto, inquit Antonius, statim alte extollens "M. Brutus pugionem, Ciceronem nominavit, atque ei recupe-"ratam Libertatem est gratulatus." Philippic 2nd.

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Brutus, and even the stern and exemplary Cato? If we descend to the opinions of men in our own country, and even in our own age, we shall find that an eminently pious prelate, and another illustrious scholar have expressed the same approbation of tyrannicide which Mr. Fox has expressed, but in terms *more* energetic and more copious; and that Mr. Hume, the zealous advocate for kings, has assigned for the practice the same reason, and, in substance, the same apology which Mr. Fox has assigned, in the *want of trial* for offenders.

Among other pleas Cicero afterwards says "quid interest, inter "Suasorem Facti et Probatorem. Omnes boni, quantum in "ipsis fuit, Cæsarem interfecerunt." Ibid.

Akenside alludes to the story in these animated lines:

"Look then abroad through Nature, to the range
"Of Planets, Suns, and adamantine Spheres
"Wheeling unshaken through the Void immense;
"And speak, O Man! does this capacious scene
"With half that kindling majesty dilate
"Thy strong conception, as when Brutus rose
"Refulgent from the stroke of Cæsar's fate,
"Amid the crowd of Patriots; and his arm
"Aloft extending, like eternal Jove,
"When Guilt brings down the Thunder, call'd aloud
"On Tully's name, and shook his crimson steel,
"And bade the Father of his Country hail!
"For lo! the Tyrant prostrate on the dust,
"And Rome again is free."

(Pleasures of Imag. book i.)

Akenside has been suspected of a bias towards Republicanism. But is every Republican an advocate for assassination? Akenside more than "half meets the question" of Cæsar's death. But does it follow, from his approbation of the Roman conspirators, that he would have applauded the assassin of an English Sovereign?

"Gladium suum," says Bishop Lowth, "pariter et "lyram patriæ et libertati Alcæus consecraverat. Equidem "tam vehemens tamque animosum dicendi genus, a tali in- "genio tractatum, permultum habuisse momenti necesse est "in hominum mentibus, cum ad omnem honestatem erigen- "dis, tum a scelere absterrendis; maxime vero in favendo, "et sustentando illo vigore animi atque generosa *Ἀξιώσει*, "quæ libertatis alumna eadem est et custos. Num veren- "dum erat ne quis tyrannidem Pisistratidarum Athenis in- "staurare auderet, ubi in omnibus Conviviis, et æque ab "infirma Plebe in Compitis quotidie cantaretur *Σκόλιον* illud "Callistrati nescio cujus, sed ingeniosi certe Poetæ et *valde* "*boni Civis?*" Lowth then quotes the Regicide *Σκόλιον* at full, and thus proceeds: "Quod si post Idus Martias e "Tyrannoctonis quispiam tale aliquod Carmen Plebi tra- "didisset, inque Suburram, et Fori Circulos, et in ora "vulgi intulisset, actum profecto fuisset de Partibus deque "Dominatione Cæsarum. Plus mehercule valuisset unum "*Ἁρμοδίου Μέλος* quam Ciceronis Philippicæ omnes*."

This passage, without the aid of a comment, sufficiently shows the judgment and the feelings of the learned writer upon the tyrannicides of antiquity.

To exquisite taste, and learning quite unparalleled Sir William Jones is known to have united the most benevolent temper and the purest morals. But shall we accuse him of a bias towards assassination because he translated the scholion of Callistratus, or because he has imitated a glowing and animated Fragment of Alcæus? I will quote, in part, the words of that most amiable and most wonderful man.

"Thus Harmodius shone thy blade,
"Thus, Aristogiton! thine,
"Whose, when Britain calls for aid,
"Whose shall now delay to shine?

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* Prælect. I. de Sac. Poes. Heb.

" Dearest youths in islands blest*,
" Not like recreant idlers dead,
" You with fleet Pelides rest,
" And with godlike Diomede."

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* In some latin verses ad libertatem Sir William Jones writes in the same strain:

" Quis myrteâ ensem fronde reconditum
" Cantabit? Illum, civibus Harmodi
" Dilecte servatis, tenebas:
" Tuque fidelis Aristogiton.
* * * * * *
* * * * * *

" O ter placentem Palladi victimam!
" Nec tu minorem Roma dabas Jovi;
" Ex ore cum Bruti sonaret
" Sanguine Cæsareo rubentis
" Vox grata Divis, grataque Tullio."

If Mr. Fox had written the forgoing verses they would have been urged as proofs of his guilt, and I should have said,

" multa in homine, Demea,
" Signa insunt, ex quibus conjectura facile fit;
" Duo cum idem faciunt, sæpe, ut possis dicere,
" Hoc licet impune facere huic, illi non licet:
" Non quod dissimilis res sit, sed quod *is qui facit.*"

(Terent. Adelph.)

The general tenor of Jones's political writings, and the contents of a particular book which produced a well-known prosecution at Shrewsbury, would enable me to repel any comparisons injurious to Mr. Fox. But I honour both these worthies, and both do I acquit of any bias to the assassination of kings.

Cremutius was accused for having praised Brutus, and for having called Cassius, Romanorum ultimum. In his defence he says,

Here it must be fairly allowed that Sir William Jones, when writing English Poetry, and fired at the moment with the spirit of an ancient Greek Poet, transferred to Britain a precedent from Athens. But if he had been writing prose, he was too good an historian, too good a logician, and too good a citizen, to have confounded the Athenian with the English government. Speaking of his own contemporaries, he tells us that the deed of Wentworth was not less glorious, nor the meed of Lenox less brilliant.

" Noblest chiefs! a heroe's crown
" Let th' Athenian patriots claim,
" You less fiercely won renown,
" You assumed a milder name.
" They through blood for glory strove,
" You more blissful tidings bring,
" They to death a tyrant drove,
" You to fame restor'd a king."

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says, " Titus Livius eloquentiæ ac fidei præclarus imprimis, Cn. " Pompeium tantis laudibus tulit, ut Pompeianum eum Augustus " appellaret. Neque id amicitiæ eorum offecit. Scipionem, Af- " ranium, hunc ipsum Cassium, hunc Brutum, nusquam latrones, " et parricidas, quæ nunc vocabula imponuntur, sæpe ut insignes " viros nominat. Asinii Pollionis scripta egregiam eorundem " memoriam tradunt." (Taciti Annal. lib. iv. par. 8.)

If any prosecution had been commenced against Lowth, or Jones, or Akenside for supposed inuendoes in their commendation of the Roman Tyrannicides, each of them might have said with Cremutius: " Suum cuique decus posteritas rependit. Nec " deerunt, si damnatio ingruit, qui non modo Cassii et Bruti, " sed etiam mei meminerint." Let the accusers of such writers remember the remark of Tacitus upon the ultimate effects of such accusations. " Punitis ingeniis gliscit auctoritas. Neque " aliud externi reges, aut qui eâdem sævitia usi sunt, nisi dedecus " sibi, atque illis gloriam peperêre."

I should hope that a friendship begun in childhood, and continued, without [illegible] through boyhood, youth, and manhood, enables [illegible] racter of Sir William Jones; and, believing myself to understand it, I have no hesitation in asserting that, with all his fondness for the tyrannicides of antiquity, he would have looked with horror upon the assassin of an English king. Catching, indeed, the spirit of antiquity, when he was imitating ancient poets, Sir William thus writes in his translation and expansion of the Fragment from Alcæus:

"Men who their duties know,
"But know their rights and knowing dare maintain,
"Prevent the long aim'd blow,
"And crush the tyrant while they rend the chain.
"These constitute a state."

Such was the language of an English subject, and an English Judge. But I disdain to vindicate him, as he would have disdained to vindicate himself, from the charge of being an advocate for the assassination of Christian kings.

Let us now turn to Mr. Hume: "The maxims of an-
"cient politics contain, in general, so little humanity and
"moderation, that it seems superfluous to give any par-
"ticular reason for the violences committed at any par-
"ticular period: Yet I cannot forbear observing that the laws,
"in the latter ages of the Roman Commonwealth, were
"so absurdly contrived, that they obliged the heads of
"parties to have recourse to these extremities. All capital
"punishments were abolished. However criminal, or, what
"is more, however dangerous any citizen might be, he
"could not regularly be punished otherwise than by ban-
"ishment; and it became necessary, in the revolutions
"of party, to draw the sword of private vengeance; nor
"was it easy, when laws were once violated, to set bounds
"to these sanguinary proceedings. Had Brutus himself
"prevailed over the Triumvirate, could he, in common
"prudence, have allowed Octavius and Anthony to live,
"and have contented himself with banishing them to

" Rhodes or Marseilles, where they might have plotted " new commotions and rebellions? His executing C. An- " tonius, brother to the *Triumvir*, shews evidently his sense " of the matter. Did not Cicero, with the approbation of " the wise and virtuous of Rome, arbitrarily put to death " Cataline's associates, contrary to law, and without any " trial or form of process? And if he moderated his exe- " cutions, did it not proceed, either from the clemency " of his temper, or the conjuncture of the times?—a " wretched security in a government which pretends to laws " and liberty *."

If any man will calmly compare the foregoing passages, which I have quoted fully and fairly, with the words of Mr. Fox, he will find me justified in maintaining that Mr. Fox held no other opinion than Bishop Lowth and Sir William Jones did, upon the Tyrannicides of antiquity, and that he has assigned no other *reason* than Mr. Hume did for the practice.

But would it be consistent with common candour, or even common sense, to infer from these opinions that Bishop Lowth, or Sir William Jones, or Mr. Hume, or Mr. Fox would have stood forth as the advocate of a Jaques Clement, a Ravaillac, a Gourney, or a Montravers, or a Tyrrel and his three bloody associates, Slater, Dighton and Forest?

In looking back to these odious offenders we can hardly fail to observe, that religious zeal is not less treacherous, and perhaps is more sanguinary, than political. The English assassins just now mentioned were profligate hirelings. But the French regicides dispatched their victims voluntarily, cordially, gratuitously, and with a latent feeling, common to the Pharisees of old, and their Christian successors in bigotry, that they were " doing God service." Fanaticism, under all disguises, and at all times, is pregnant with danger to all the members of society, from the highest to the lowest. But if I were asked, where a monarch

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* Essay on the Populousness of Ancient Nations.

who governs well, or a monarch who governs ill, is personally most safe, I should have the testimony both of history and philosophy in my favour, when I said—*in a land of civil and religious freedom, there, and there only,* the moderation and the magnanimity inspired by freedom throw a curb upon popular fury, and there tyranny itself is more deeply dreaded and more keenly hated, than the tyrant.

Who shall answer for the general opinion which he might himself have adopted, if he had been a native of Greece or of Rome? For my part, I approve not the encroachments of Julius Cæsar. But if, with my present feelings, I had been in the Senate House, I should have arrested the arm of the conspirators, and though told even by Brutus, that "the great Julius had bled for Justice' "sake," I should not have waited for the speech of Anthony, before I had said with the indignant Plebeian,

> "We'll burn his body in the holy place,
> "And with the brands fire all the traitors' houses*."

I detest the cruelties of Domitian, and yet I am overpowered with an involuntary and irresistible emotion of pity, when I read "illum correpto deductoque ad Terram "Stephano† colluctatum diu, modo Ferrum extorquere,

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* Shakespeare.

† If the account which I have heard of some circumstances in the late assassination of the unfortunate Emperor Paul be accurate, there is a strong resemblance in the resistance made by him and by Domitian to their respective murderers. The perfidious and sanguinary Chancellor of Paul might, in *some* respects, have found his own prototype in Stephanus, "qui Domitillæ "Procurator, et tunc interceptarum Pecuniarum reus Consilium "obtulit * * * * professusque Conspirationis Indicium, et "ob hoc admissus, legenti traditum a se Libellum, et attonito "suffodit Inguina." (Suetonius ibidem.) Stephanus, no doubt, executed the deed which the Russian Chancellor was content only

" modo, quanquam *laniatis Digitis*, oculos effodere co-
" natum *."

I honour the Roman Senate when, instead of leaving Nero to violence from the dagger, or perfidy from the poisoned bowl, they passed a decree " ut puniretur more ma-
" jorum." My abhorrence of the enormities perpetrated by that tyrant is vivid and inextinguishable; and yet my heart shrinks within me, when, upon the approach of the Equites who had been sent to drag him alive from his palace, I read " trepidanter effatus

" Ἵππων μ' ὠκυπόδων ἀμφὶ κτύπος ὄυατα βάλλει,
" Ferrum Jugulo adegit, juvante Epaphrodito a libellis †."

I know the arguments which ancient writers have used in defence ‡ of Tyrannicide, and against it. I know the impressions which are made upon the minds of scholars when they read

" The Songs
" Of Grecian Bards, and Records writ by Fame
" For Grecian Heroes §."

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to encourage and to facilitate. But each betrayed his royal master, under pretence of revealing a crime, to which the one was an accessary, and in which the other was a principal. The guilt of the Chancellor, from his high and confidential situation, was greater than the guilt of Stephanus, who held only a subordinate employment, and was under some fear for his own personal safety.

* Suetonius in Vita Domitiani, par. 17.

† Suetonius in Vita Neron. par. 49.

‡ Some of those arguments may be found in the Tyrannicida of Lucian, see vol. 2, Ed. Reitz.

§ Pleasures of Imagination, book 2.

But let us not go back to Cæsar, or Jason of Pheræ, or the Siculi Tyranni *, if we are anxious to learn how we should *ourselves* judge, or feel, or act, in the relations in which we stand to our own governors, in our own times. *We* live in a more civilized age. *We* are protected by milder governments. *We* are guided by the light of a more pure and holy religion. "All kinds of government," says Mr. Hume, "free and absolute, seem to have undergone, in "modern times, a great change for the better, with regard "both to foreign and domestic management †." We cannot reflect upon antiquity, nor indeed upon later times, without perceiving that "the Tyrannicide or assassination approved "by ancient maxims, instead of keeping tyrants and u-"surpers in awe, made them ten times more fierce and "unrelenting." We cannot converse with men of ordinary or extraordinary sense and virtue among our contemporaries, without observing that "Tyrannicide is upon that "account," (and, let me add, upon many more accounts deeply interesting to the cause of morality) "abolished by "the law of nations, and universally condemned as a base "and treacherous method of bringing to justice those "disturbers of society ‡."

I should look with an eye of suspicion and disdain upon any moral philosopher, or any political writer, or any religious teacher, who would make the smallest compromise upon this important subject. Tyrannicide, I know, was practiced by the ancients in the hour of rage, and approved in calmer seasons. From the frailty and wickedness of man there is danger, lest that which has often happened in remote periods should sometimes happen again. I am no stranger to the blindness or the fury of fanaticism, whether political or religious. My reason tells me that they are able to burst the strongest barriers of justice and hu-

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* Vid. Hor. Epist. ii. lib. 1.

† Hume's Essay on Civil Liberty.

‡ Hume's Essay on Passive Obedience.

manity. My imagination can set no bounds to their ravages, when opportunities and incitements to their action unhappily occur. I have been an immediate observer of the effects which the temporary situations of public affairs, or the momentary passions of private men can even now produce. I have been present when my fellow-christians and my fellow-subjects have attempted at least to excuse what they were not hardy enough to justify, or depraved enough to commit. I have heard some expressions of satisfaction, when the plot for the assassination of Paul succeeded. I have witnessed some involuntary signs of regret, when another plot, aimed against the life of another Emperor, was unsuccessful*. I have resisted, and I always shall resist, the principle of assassination, unequivocally and universally, in christian countries. I will not, in any case, hold parley with distinctions and exceptions. I feelingly remember that "there is no virtue or moral duty, but what "may, with facility, be refined away, if we indulge a false "philosophy, in sifting and scrutinizing it, by every cap-"tious rule of logic, in every light and position in which "it may be placed †."

I should turn away with disgust and with horror, from the most ingenious reasoning, and the most eloquent remonstrances upon extreme cases, real or hypothetical. In regard to cases which fall short of extremes, I have often reflected upon the difficulty which we find in fixing upon adequate and appropriate terms to describe them—upon the unsteadiness of our judgments, as different parts of a complicated subject present themselves to our mind in rapid and disorderly succession—upon the impossibility

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* Of the detestation in which Mr. Fox held assassination, we have a decisive proof in his behaviour to the miscreant, who offered his services in the murder of Napoleon. This well-authenticated fact may be opposed to the surmises and insinuations of the Reviewer upon Mr. Fox's theoretical opinions.

† Hume's Essay on the Original Contract.

of anticipating all the circumstances which constitute the merits or demerits of a particular question when it occurs—and above all upon the danger of familiarising our thoughts to any strong determination upon our own manner of acting at a season, which has not yet arrived, and in which men are usually impelled to act by the hopes they feel at the moment, or by their fears, or by their sympathy with a whole people, exasperated by long oppression, and resolved to obtain redress by violence against the oppressor. In the fearful contemplation, therefore, even of such cases as, in appearance, are not the worst, I should oppose the warnings of experience, the authority of laws, the sanctions of religion, and the voice of unperverted nature itself, to the cold abstractions of theory, the obliquities of casuistry, and the extravagancies of fanaticism.

"A speculation," says Taylor, "considers the nature "of things, abstractedly from circumstances physically or "metaphysically, and yet, when it comes to be reduced to "practice, what in the *head* was innocent, will, upon the "*hand*, become troublesome and *criminal**."

In the whole circle of politics there is, indeed, no question upon which we can say more justly, than in the spirit of Taylor every good man will be disposed to say, upon the most plausible apologies for assassination: "They "ought not easily to be drawn into *rules*, lest" factious and vindictive men "turn them into a *pretence* †."

There is no question upon which my head or my heart requires any shorter or *surer* direction than, upon this topic, I find in this aphorism: by the secret Poniard, or the treacherous Cup, THOU SHALT DO NO MURDER.

But hateful and pernicious as I know the crime of assassination to be, from circumstances innumerable and quite inexcusable, there is *another* species of homicide, still more hateful, and more pernicious. I mean *that* which is effected by a perverse interpretation of laws—that, by which our

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* Ductor. Dub. book i. chap. 4. † Ductor. Dub. book i. chap. 2.

best security is abused to our destruction—that, from which the meanest and the greatest subject can rarely escape, when the conspiracy against life is conducted by a crew of perjured witnesses, and deluded or corrupted jurymen: by the cavils, sophistries, declamations, and invectives of venal Crown-lawyers: by the acquiescence or the aid of temporizing Judges: and at the mighty nod, or with the approving smile, or with the anticipated connivance of sceptred oppressors. Under the Tudors and the succeeding dynasty, such murders were not unfrequent, and to this hour the havoc made by them among the innocent and the guilty, chills my soul with horror. Since the expulsion of the Stuarts one attempt only of this kind has, I believe, been made among us. But it was marked, as I have heard from an eminent lawyer, with the *peculiar* demerit of combining accumulative with constructive treason. It was foiled, as I have read in the chronicles of the day, by the good-sense and firmness of an English jury; and it gave occasion for a keen-eyed observer to say of the prime mover in this meditated deed of blood, "Jam-"diu sullaturit animus ejus et proscripturit*."

It is difficult to frame clear and definite laws, and it might be yet more difficult to execute them against offenders who, like the persons of whom I am speaking, skulk behind precedents and analogies; and in the quiet course of earthly affairs, there is *nearly* sufficient protection for us in the integrity, or at least the discretion of individuals, and in the authority of public opinion. But the assassin, unless he be employed by wicked politicians for a wicked end, is always exposed to detection; and upon detection punishment follows closely and surely; and along with punishment go the loud and just execrations of his indignant fellow-creatures.

Who among us has not shed a tear of pity, when he read the tragical end of the infatuated Edward, of the headstrong Richard, of the meek and pious Henry, and of that guileless youth, who, though his brother was per-

* Cic. ad Attic. lib. iii. Ep. 12.

haps immolated by a later and yet more flinty-hearted usurper*, seems to have perished, somewhere or other, by the dark contrivances of an ambitious and inhuman uncle? But let it not be forgotten that, even at a later period, the cause of assassination has in this country met with a *royal* patron†, who, like her progenitors, and some of her successors, was surrounded by a servile herd, skilful enough and ready enough to

"Mark the keen glance, and watch the sign to hate‡."

Yes—*Elizabeth* "had the person of Mary Queen of Scots

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* Henry the Seventh.

† At this distance of time, and with the imperfect materials with which history has supplied us, we have no clue to the extent of the immediate and real guilt of Henry VII. or Richard III. in the cruel murder of English princes. As to later times, Burnett tells us upon the authority of Tyrconnel's papers, said to be found at Dublin after the flight of James the Second, that, in a letter from that nobleman to the Queen at St. Germain's, he professes to have "no hope, except in Jones's business"—that, from the information given to Burnett by Lord Caermarthen, "Jones had "been commissioned to assassinate William the Third;" and that, according to another of Tyrconnel's papers, James, "who did "not like the thing, was satisfied in conscience and honour by "the advice of his counsellors." I am disposed to acquiesce in any objection which *tends* to rescue the memory even of such a senseless bigot and such a merciless tyrant as James, from the infamy of giving encouragement to the assassination of a competitor for the throne of England. Has it been explained to us, I would ask with Dr. Leland, "how papers of such im- "portance were suffered to be left in the camp, when the bag- "gage of James had been previously sent to Dublin, in ex- "pectation of a defeat?" (See Leland's History of Ireland, vol. iii. page 568.)

‡ Johnson.

"within her power." Elizabeth had brought to trial, before an English court of Judicature, Mary, who was not a subject of the English Laws. Elizabeth had employed her minions to condemn Mary, by the grossest violation of all the rules under which the meanest offender might have found protection from the criminal proceedings of English justice. Elizabeth *attempted to do more*. Elizabeth, as Robertson says, "hinted to Paulet and Drury, as well as "to some other courtiers, that now was the sincerity of "their concern for her to be shewn; and that she expected "their zeal would extricate her out of her present per-"plexity." When the bloody warrant had been signed, Elizabeth commanded "her secretary Davidson to write a "letter to Paulet in less ambiguous terms." Elizabeth is represented, under the signatures of Davidson and Walsingham, as "taking it most unkindly that men professing that "love towards her that you do," says the document, "should, in a kind of sort, for lack of the discharge of "your duties, cast the burden upon her, knowing, as you "do, her indisposition to shed blood, and especially of "that sex and quality, and so near to her in blood *, as this

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* Elizabeth, I must own, met with a rival, not only to her power, but to her wickedness, in Philip the Second. By his command Antonio Perez had murdered an Escovedo, the favourite of Don John of Austria. Afterwards his Catholic Majesty stirred up a vigorous prosecution against the offender, partly in order to conceal his own share of guilt with Perez the *assassin*, and partly to avenge himself on Perez the *pander*, who had tricked him in a contemptible amour. His Catholic Majesty, also, in 1568, ordered the heir of his crown, Don Carlos, to be executed, professedly, indeed, to punish an attempt which he accused his son of having made against the life of his sovereign and his father, but *more* probably, as historians say, to effect his purpose of marrying Isabella, to whom Don Carlos had been betrothed. (Vid. Puffendorf's Introduction to the History of the Principal States of Europe, Vol i. p. 79, in Sayer's Translation.) I should be among

" said Queen." Elizabeth hypocritically talks of the restraints which sex and quality, and near relation imposed upon her own conscience, in the very moment when her ministers, in her name, by her command, and for her ends, were encouraging Paulet to imbrue his hands in blood, without any regard to sex, or quality, or relationship. Elizabeth, when she heard of Paulet's refusal to commit the deed of horror, called him " a dainty and precise fel- " low." Elizabeth, when she was disappointed in Paulet and Drury, as Richard the Third had been in Sir Thomas Brackenbury, found, or supposed herself to have found another Sir James Tyrrell in Wingfield; and by name she pointed him out as a person " who had both courage and

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among the first to execrate and to punish such enormities, when committed by miscreants who are subject to the laws. But I scorn to extenuate or dissemble them, when they are perpetrated by the orders, and for the ends of sceptered murderers, whom the laws cannot reach. The Prince who employs an assassin, against his subjects, or his enemies,

" In semet legem sancivit iniquam."

HOR.

There is little occasion to blacken the memory of that wicked monarch, Charles II. by the aid of invidious conjectures. It is very possible that he had not formed any design against the life of Milton, who, as he says of himself, was " in darkness, and " with danger compassed round," and who, as Richardson informs us, " apprehended himself to be in danger of his life; first, from " public vengeance (having been very deeply engaged against " the royal party,) and, when safe by pardon, from private ma- " lice and resentment. He was always in fear; much alone, and " slept ill." (Richardson, page 291.) I know the last biographer of Milton to be largely gifted with learning, taste, acuteness, candour, benevolence and piety, and therefore I shall quote the words which he uses after producing the testimony of Richardson. " Milton's apprehensions were not those of a weak mind, " or felt without sufficient cause. The murder of Doryslaus and

inclination to "strike the blow." These things were done by Elizabeth, in the corner of a court—done by a wretch, who, with mingled cunning and audacity, urged her own unwillingness to shed blood, as *the very reason* which should induce a fellow-creature and a subject to shed it without reluctance and without remorse. When she could find no hand to execute what her own depraved heart had conceived; when by false alarms and by false accusations, she had inflamed a whole Parliament, and deluded a whole people into compliance with her infernal wishes; when she had employed every artifice of female craft and every engine of regal power to "secure the advantages that might arise "from Mary's death, without appearing to have given her "consent to a deed so infamous;" Elizabeth, as was justly said by the unfortunate victim of her tyranny, SET THE FIRST EXAMPLE OF VIOLATING THE SACRED PERSON OF A SOVEREIGN PRINCE. "She vio-"lated," says a sagacious and indignant historian, "the "most established principles of law and justice, the honour "of hospitality, the reverence of her sex, the holiness of "religion, the security of engagement, the ties of relation, "the feelings of humanity, the sanctity of innocence, and "THE MAJESTY OF KINGS."

"Scelus *hoc* quo nomine dicent,
"Qui Bruti dixere *nefas* *."

"of Ascham, at the Hague and at Madrid, had shown to the "world that Royalist vengeance could assassinate; and the fate "of Ludlow, pursued with daggers into the heart of Switzerland, "fully demonstrated that at the time of which we are speaking, "party rancour had resigned no portion of its revengeful and san-"guinary atrocity." (Symmons's Life of Milton, page 462.) I am much disposed to acquit Charles himself of any murderous purpose against Milton. But what apology has yet been framed for his participation in the death of Doryslaus and Ascham?

* Lucan, lib. 8.

Compared with the complicated and systematic wickedness of Elizabeth—a sovereign, and the descendant of sovereigns—with her envy, with her hypocrisy, with her wanton insolence, with her savage cruelty, with her outrages against royalty, and with her apostacy from nature, the guilt which an impartial man would ascribe to the destroyers of Charles I. and the yet more atrocious murderers of Louis XVI. must strike his mind with diminished surprise, diminished terror, and diminished detestation.

As to the Reviewer, I am persuaded that he holds the same sentiments with my own, upon the odious and infamous practice of assassination. But I shall not apologize for the freedom with which I have examined, and endeavoured to refute his insinuations against Mr. Fox, as the advocate of modern assassins.

I read with equal surprise and concern the broad declaration of the Reviewer in the British Critic, that "in "terms proceeding from a spirit of the most morose and "illiberal bigotry, Mr. Fox every where sedulously ex-"presses himself against churchmen and the church." The levity with which Mr. Fox speaks of the Address from Oxford is, I confess, offensive to me, for I hold with Sir William Jones, that "wit ought to be wholly banished from histori-"cal composition*." Indeed I have always felt the strongest indignation at the sarcasms of Gibbon, and the raillery of Voltaire, when misplaced in history, and when misdirected against religion. But if in the gravest and severest terms of reprobation I should have expressed my own sentiments upon the language of many prelates and many ecclesiastics in the reign of James, I should not have been conscious of any "illiberal bigotry against churchmen "and the church;" and perhaps I should have been impelled to adopt such terms from my conviction that the solid interests of the church are inseparably connected with the constitutional liberties of the subject, and with such prerogatives in the Crown as are not unconstitutional.

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* Preface to Nadir Shah.

No part of Mr. Fox's History excited a more powerful interest in my mind than that in which he describes the execution of the Duke of Monmouth. I reverence the learning and disinterestedness of Bishop Hooper*, the piety of Bishop Ken†, and the general moderation of Archbishop Tenison. But I shuddered on reading the behaviour of Bishop Ken and Bishop Turner‡ to the unfortunate nobleman. Among the most rigid accusers of Mary Queen of Scots, no one has stood forth as an apologist for the brutal behaviour of Fletcher, the Dean of Peterborough. Yet a better plea might be urged for his justification than can be adduced in favour of our two English prelates. Mary died in the belief and profession of a religion which the Dean considered as unauthorised by the scriptures, and as dangerous to her salvation. Monmouth lived and died a professed and sincere member of the English church. The spirit of the times may form some sort of excuse for the Bishops, in dwelling before the moment of execution upon those topics of non-resistance, &c. which, as the Reviewer tells us, were then of great weight, but have since fallen into *less consideration.* I hope, however, that such topics will always be remembered by my countrymen, often be considered by them, always stripped of theoretical disguises, always watched in their practical tendency; and that the opinions of Monmouth's

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* Without any application for preferment he was made Dean of Canterbury by Queen Mary, while William was in Holland, and afterwards in the reign of Anne, when her Majesty wished to remove him from the see of St. Asaph to that of Bath and Wells, he refused to be translated, till the importunity of his friend Dr. Ken, the deprived Bishop, overcame his reluctance.

† The character of Bishop Ken has been drawn by the hand of a skilful master, Mr. Thomas Zouch. See page the eleventh of his Life of Isaac Walton, No. 5.

‡ According to Rapin these were the two prelates who on the scaffold disputed with Monmouth about non-resistance.

spiritual counsellors upon those topics will always be condemned by English subjects, and always disclaimed sincerely and unequivocally by English ecclesiastics. My disapprobation of the behaviour imputed to the bishops is chiefly directed against the confession, which they endeavoured to extort from a fellow-creature who had fallen from the height of prosperity, who saw death before him in its most terrific form, who meekly acknowledged the justice of his sentence, and who seriously considered himself as standing upon the verge of eternity. But "no confession," says the Reviewer, "that Monmouth could make, of which his rebellion a-"gainst James, and his connection with Lady Harriet "Wentworth did not form parts, could be received by the "Bishops as such* according to the rubric; the censure of "Mr. Fox ought therefore to have been directed against "the rubric itself; not against men who simply obeyed "the directions of the church in which they occupied high "stations, and were therefore particularly pledged to ob-"serve them."

Upon any other occasion I should have felt the strongest reluctance to enter into any discussion upon the rubric of the Church of England, while I was expressing my opinion upon the merit of Mr. Fox as an historian. But the reflection made with so much seriousness and so much confidence by the Reviewer has connected the subject with a material event in the history of our country, and has excited in my mind an additional and very unexpected interest. Whether Mr. Fox has blamed the Bishops indecorously, or whether he ought to have blamed them at all, are questions very distinct from his right to blame the rubric. For the rubric did *not* forbid the Bishops to receive from Monmouth a confession in which his rebellion against James did not make a part, and *therefore* the high stations

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* I do not distinctly understand, to what the phrase, *as such*, refers—could not a general confession, *as such*, have been accepted on the scaffold, without any violation of the rubric? This is the very *res quæde agitur*.

which they occupied in the church did not imply such a pledge to the observance of the rubric as required them to demand from Monmouth such a confession as included directly and specifically his rebellion against James. In order, then, not so much to vindicate the memory of Mr. Fox, as to explain the obligations really imposed upon the venerable prelates by the rubric, I shall proceed to justify my own position by the following minute and faithful detail.

It is proper for me to lay down a preliminary distinction between that which passed in the prison, and that which passed on the scaffold. I do not take upon myself peremptorily to affirm or peremptorily to deny that the rubric enjoined the Bishops to act in *some* respects as they are said to have acted, while they were with Monmouth in the prison. But I would be understood to deny directly and unequivocally that they were obliged, or even warranted by the same rubric to demand from Monmouth a particular confession, when he was on the scaffold. Their obligation and their warrant, as I shall have occasion hereafter to repeat, if they can be found at all, must be found *elsewhere* than in the quarter to which *alone* the Reviewer has directed our attention.

In what part of the rubric, let me ask, were these prelates directed or even authorised to demand such a confession at such a *time?* According to the *homilies*, indeed, upon obedience to the higher powers, as we shall see presently, the invasion amounted to rebellion. The doctrines contained in those homilies *may* be true, and may be important. But they are not made by the church, as I shall hereafter show more at large, subjects of particular confession to laymen. Doubtless the connection of Monmouth with Lady Wentworth was in the view of the homilies and of common-sense adulterous, and though some mitigating circumstances had decoyed the offender into a state of self-delusion upon the malignity of the offence, yet Tenison and Hooper, when they were with him in prison, evidently with the intention of giving him the sacrament, were justified by the rubric itself in their previous endeavours "to convince

" him of the falshood of his opinion." " Monmouth," says Rapin, " chose rather to deprive himself of the communion " itself than to own his engagements with that lady to be " unlawful." But when the well-meant endeavours of these divines to convince him of his error had thus failed, they might in the opinion of some persons be farther justified by the rubric in refusing to let him partake of the sacrament *. But with that refusal ended their office, as prescribed by the rubric. Compassion and piety might have

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* The predecessor of James died in communion with the church of Rome. But while it was treason to say that he lived so, his libertinism was very undisguised and unrestrained. Many ecclesiastics who attended him were men of distinguished learning and irreproachable morals. But it is no where recorded of them that they " advertised Charles that he should in no wise " presume to come to the Lord's table until he had openly de- " clared himself to have truly repented and amended his former " naughty life, that the congregation," consisting of Lords of the Bedchamber and other grave and scrupulous courtiers, " might " thereby be satisfied, which before were offended."

While James was connected with Mrs. Sedley he was under the direction of Popish counsellors, and it is unknown to me whether they strictly adhered to the seventh canon of the Council of Trent, which declared it necessary by the divine law to confess before the sacrament " omnia et singula peccata mortalia, which any one does remember or can recollect by due and diligent meditation." The orthodoxy of those ecclesiastics who refused the communion to Monmouth on account of his criminal intercourse with Lady H. Wentworth, may not have been brought to the test in any religious intercourse with their frail sovereign. But nothing less than that charity " which believeth all things and hopeth all things," would induce some men to presume that from the same sense of duty to the authority of the rubric they would with the *same* firmness have forbidden James, as they forbad Monmouth, to be a partaker of the sacrament. If that rubric be *so* clear, so peremptory, so obligatory, as it has been lately represented, what apology can be offered for the Very Reverend Deans of the

induced them to resume the subject of Monmouth's adultery, while they were with him upon the scaffold. But as the sacrament was not to be administered to him there, the directions of the rubric, as connected with it, were no longer applicable. Even the topics of non-resistance and rebellion ought to have been discussed in the prison, rather than upon the scaffold; and if Monmouth before receiving the sacrament had appeared to his spiritual counsellors obstinate or impenitent, they might perhaps, even upon those subjects, as well as upon that of adultery, have ex-

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Royal Chapel, and other ecclesiastics, who in later times must like other men have heard, and like other men have believed the stories which were in circulation about two titled courtezans, whom it is unnecessary to name?

" Paruit omnis
" Imperiis, non sublato secura timore
" Turba, sed *expensa* Superorum et Cæsaris ira."
(Lucan. lib. 3.)

In their transactions with a subject and a criminal, ecclesiastics may go a great length, always with impunity, and sometimes even with credit for their official exactness and their personal sanctity. But there are certain situations in which they may suspect some convenient truth to be lurking under the beggarly elements of that philosophy which taught " omnes virtutes " mediocritate quâdam esse contentas;" (Cicero pro Muræna.) and if they had been asked, why they swerved a little from the letter of the rubric, some of them might have pleaded a scriptural rule against " over much righteousness," and others might have waxed bold under the shelter even of a Heathen moralist,

" Insani sapiens nomen ferat, æquus iniqui,
" Ultra quam *satis* est, virtutem si petat ipsam."
(Hor. Ep. 6. lib. i.)

Shade of Whiston, wilt thou judge these men? Are not their ways unequal? In all thy own intercourse with kings or with subjects, were not thy ways equal?

ercised their own *discretion* in refusing him the sacramental bread and cup. "If any man be an open and notorious "evil liver," says the rubric, "or have done any wrong to "his neighbours by word or deed, so that the congregation "be thereby offended; the Curate having knowledge thereof "shall advertise him that in any wise he presume not to "come to the Lord's table, until he hath openly declared "himself to have truly repented and amended his former "naughty life, that the congregation may be thereby sa-"tisfied, which before were offended." Monmouth by his rebellion may be said to "have done wrong to his neigh-"bours," and by his intercourse with Lady Wentworth to have been "a notorious evil liver." But what is the Curate required to do by the rubric? He is to "advertise him that "he presume not to come to the Lord's table." What is the Curate required to do even in the administration of the sacrament? "To exhort the people that they make," *not* a particular, but "an humble confession of their sins," and that, *not* to man, but "before Almighty God." What is the ground upon which previously to the sacrament the Curate is required to advertise any person who would partake of it? "That the congregation, which before were offended, "may be satisfied, when the offender has openly declared "himself to have truly repented and amended his former "naughty life." Were the spectators, whom I am willing to consider as the congregation, so offended, to the knowledge of the Bishops, that they would not have been satisfied without the particular confession which the Bishops exacted? If they were not so offended, the Bishops' requisition was unauthorised by the rubric prefixed to the communion. If they were so offended, the requisition was ill-timed, and therefore unauthorised, because the season for administering the sacrament had passed by. Now for the honour of the English church I will subjoin part of a note upon this subject, written by the learned and pious Dr. Nicolls. "Some severe "discipline, such as the repulse of Theodosius, might not be "amiss, while it was grounded only upon piety and zeal for "God's honour, as it was in ancient times. But afterwards, "other not so warrantable passions mixed in the minds of "those who ministered in holy things, and some persons were

" debarred the communion out of pique and resentment. " There was an imperial injunction prohibiting all, both " Bishops and Presbyters, from shutting any one from the " holy communion before just cause be shown whether the " holy canons do give them the power so to do*; and the " canon did not also allow a discretionary power to the " priests to thrust away every ill person from the sacrament: " Etiam criminosus ingerens se in Communionem non est " repellendus, sed potius privatim inducendus et admonen- " dus. The compilers of the rubric in Edward the Sixth's " time limited this discretionary power of the minister even " to notorious crimes, to admonish such persons that they " first abstain, and only upon obstinacy to repel. But " nevertheless this gave occasion to several exceptions and " disputes, and therefore in the last revision of the Common " Prayer, repulsion was not left to the absolute power of " the minister, but he was obliged to give notice to the " Diocesan, and to take his advice therein; and still it " remains so uncertain what is notoriety both in presump- " tion, law, and fact, that a minister is not out of danger " of transgressing this rule, if before judicial conviction " of the crime, he goes farther than advising any person to " abstain." Nicolls's observations may be of use to ministers in their intercourse with persons who are not placed in Monmouth's unhappy situation; and though Monmouth himself had been judicially convicted, yet they contain no principle which justifies his ghostly counsellors in calling for particular confession *after* the sacrament had been refused to him.

The rubric to which the Reviewer appeals, does not supply any directions for the treatment of persons who are to suffer death by a sentence of the law†. But

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* Vid. Novell. 123. Canon XI.

† In Mr. Reeves's very useful edition of the Book of Common Prayer, he has judiciously inserted a Form of Prayer for the Visitation of Prisoners, which had been annexed to the Irish

let us see what *analogies* it may suggest from the directions given to ministers in the Visitation of the Sick.

Common Prayer Book, by the authority of the Irish Government, ever since the reign of Queen Anne. He supposes, however, that by the fifth article of the Union, Stat. 4. Georg. III. ch. 67. any such addition to the English Common Prayer is repealed and annulled. If it be so, I should be happy to hear that an act were to pass, not only for restoring the above-mentioned form to the Irish, but for introducing it into the English Prayer Book. The topics are, indeed, very pertinent, the language is simple and solemn, and a spirit of the most rational and most pure devotion prevails through the whole. The authors have largely availed themselves both of the matter and the phraseology contained in our service for the Visitation of the Sick, and in the best passages of the Commination. The Minister is directed "to admonish a prisoner particularly concerning the crime wherewith "he is charged, and to exhort him if he has any scruples that he "will declare the same, and prepare himself for the holy communion against the time when it may be proper to administer it to "him." A criminal under sentence of death is "required not to let "any worldly considerations hinder him from making a true and "full confession of his sins." The Minister is "to examine whether "he repent him truly of his sins, exhorting him to a particular "confession of the sin for which he is condemned," and the particular confession to which he is thus exhorted seems to be preparatory for absolution, "which is to be granted to him, if he humbly or "heartily desire it." Let us suppose a similar form prescribed by the Church of England. Monmouth did not ask for absolution, he did not deny the sin for which he was condemned, and the dispute between him and his spiritual counsellors was merely about a name. He did not even insinuate that his sentence was unjust, and if the ecclesiastics who attended him had been specially authorised, as they were not, to require "a true and full confession "of his sins," still it may be doubted whether that full confession ought not to be restricted to the instances "in which he had "wronged or injured his fellow-creatures," and for which a criminal under sentence of death is in the very same sentence required to

The minister is to "examine whether the sick person "repent him truly of his sins, and be in charity with all "the world, exhorting him to forgive from the bottom of "his heart all persons that have offended him; and if he "hath offended any other, to ask them forgiveness; and "where he hath done injury or wrong to any man, that "he make amends to the uttermost of his power." "Here "shall the sick person be moved to make a special confes-"sion of his sins, if he feel his conscience troubled with "any weighty matter. After which confession the Priest "shall absolve him, if he humbly and heartily desire it." Now if Monmouth had declared himself in general terms truly penitent of his sins, and in charity with all the world—if he did not feel his conscience troubled with those matters which the prelates, indeed, thought weighty, but he did not—if he desired no absolution from them—if he wished to receive their spiritual advice without asking for

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"give all the satisfaction which is in his power." But if it should be said that in the beginning of the sentence "a man is required "to examine himself and his estate both towards God and towards "man," yet it does not appear that he is called upon to make a minute, particular, explicit confession of every sin which he at any time of life has committed against either. The plain fact is, that even full confession is recommended only in general terms, and that particular confession is explicitly required only upon the crime for which the sinner has been condemned.

Some years ago, when I was accustomed to visit persons under sentence of death, I often felt the want of a proper service. I could not persuade myself to read some prayers and some exhortations which I found in books. They seemed to me such as would be either unintelligible or unprofitable to offenders, whether obdurate or penitent, and such as the wisdom, piety and humanity of English prelates would, I am confident, not authorise for the use of the English clergy. I will therefore repeat my earnest wish that the Irish service may be adopted, and, let me add, without addition or correction, for in its present form it appears to me to have been drawn up with the greatest possible conformity to the best possible models.

ease to his conscience in the particular cases upon which they insisted, I see not how analogical arguments drawn from the rubric for the Visitation of the Sick obliged or even *authorised* his spiritual attendants to *persevere* in demanding special confession. They might have advised and instructed him upon the special guilt of any sin, whether small or great. They did advise and instruct him upon the special guilt of two offences, which appeared to them very great. But they were in the rubric directed to "move him "to special confession," then, and *then only*, when "he felt his "conscience troubled." If their vindication rests upon prudence, or pity, or loyalty, or general anxiety for Monmouth's salvation, there may be room for difference of opinion upon the conduct of the Bishops as influenced by *such* motives. But there will also be room for some men to suspect that political tenets had their share in leading the Bishops to persist in a train of questions, which under the circumstances of the moment must have disquieted the mind of Monmouth, with little or no probability of promoting his repentance. I hope that few men now living would imitate the example of those Bishops, and I am confident that their justification must be found elsewhere than in the rubric. Mr. Fox would probably have opposed the dictates of his good sense, and the feelings of his delicacy and humanity to the authority of the rubric, if it really had contained the directions which it is said to contain. As a well-wisher to the Church of England, I have endeavoured to show that no such directions are contained in it. "The letter" of it, as understood by myself, might serve to "make alive." But "the spirit" of it, as understood and acted upon by Monmouth's ghostly counsellors, would in many cases "kill" most cruelly.

I shall now proceed to examine how far the regulations of our church, as they respect the homilies, compelled or even warranted the Bishops to require from Monmouth any particular confession while he was on the scaffold. As this subject is not familiar to the generality of readers, I shall be under the necessity of having recourse to much detail. The number of homilies in the time of Edward VI. was twenty-one. Their titles are subjoined to the thirty-fifth

article. The last, against disobedience and wilful rebellion, consists of six parts. Twelve more homilies were added in the reign of Elizabeth; and among them is an exhortation in three parts "concerning good order and obedience to rulers "and magistrates." The article on the homilies, as we now have it, runs thus: "The second book of homilies, the se- "veral titles whereof we have joined under this article, "doth contain a godly and wholesome doctrine, and ne- "cessary for these times; as doth the former books of ho- "milies, which were set forth in the time of Edward the "Sixth; and therefore we judge them to be read in churches "by the ministers, diligently and distinctly, that they may "be understanded of the people." Now to what extent are the laity concerned in the homilies? According to the article they are "to understand them." But from what per- son, at what time, and in what place are they to hear them? In the Preface, published during the reign of Elizabeth, "Her Majesty commandeth, and strictly chargeth all Par- "sons, Vicars, Curates, and all others, having spiritual "Cure, every *Sunday* and *Holiday* in the year, at the min- "istring of the holy Communion; or if there be no com- "munion ministred that day, yet after the Gospel and "Creed, in such order and place as is appointed in the Book "of Common Prayers, to read and declare to their Parish- "ioners plainly and distinctly one of the said *Homilies*, in "such order as they stand in the book, except there be a "sermon, according as it is enjoined in the Book of her "Highness's Injunctions; and then for that cause only, "and for none other, the reading of the said *Homily* to "be deferred unto the next *Sunday* or *Holiday* following. "And when the foresaid Book of *Homilies* is read over, "her Majesty's pleasure is, that the same be repeated and "read again in such like sort as was before prescribed." The laity, it appears, are to understand the Homilies, be- cause, says the article, "they contain good and wholesome "doctrine, and necessary for these times*," and, according

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* You will be glad, my friend, to see Bishop Warburton's

to Elizabeth's Preface, "they were printed anew as con-
"taining certain wholesome and godly exhortations to move

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account of the homilies upon non-resistance. "After the Re-
"formation, the Protestant divines, as appears by the homilies
"composed by the wisest and most disinterested men, such as
"Cranmer and Latimer, preached up non-resistance very strongly,
"but it was to oppose Popery. The case was this. The Pope
"threatened to excommunicate and depose Edward. He did put
"his threat into execution against Elizabeth. This was esteemed
"such a stretch of power and so odious, that the Jesuits con-
"trived all means to soften it. One was by searching into the
"origin of civil power, which they brought rightly, though for
"wicked purposes, from the people, as Mariana and others.
"To combat this, and to save the person of the Sovereign, the
"Protestant Divines preached up divine right. Hooker, superior
"to every thing, followed the truth. But it is remarkable that
"this non-resistance, which at the Reformation was employed to
"keep out Popery, was at the Revolution employed to bring it
"in. So eternally is truth sacrificed to politics." (See Letter 84 of the Correspondence between Bishop Warburton and Bishop Hurd, lately published.) Now the difference between the conduct of the ecclesiastics at the Revolution and the Reformation seems to be this. Latimer and Cranmer intended to keep Popery out. But the ecclesiastics in the time of James did *not* intend to bring Popery in, though it must be owned that the submission which they inculcated in civil affairs would have put into the hands of the king such power as would eventually have enabled him to make any change he pleased in things ecclesiastical. They acted well when they resisted, and reasoned ill in the selection of the only grounds upon which resistance according to them was justifiable. The exception to the general rule, which they at first tacitly, and afterwards openly maintained, served only to show the fallacy of the rule itself. Notwithstanding the king's supremacy, he is to be resisted when he would make Protestantism give way to Popery. Why is he not to be resisted when he endeavours to raise a system of absolute power upon the ruins of a free and mixed government? "Cum ventum ad verum esset,"

" the people to honour and worship Almighty God, and " diligently to serve him, every one according to their

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the Bishops distinguished. But no such distinction is expressed or even hinted in the canon: none, in the oath of the king's sovereignty taken at ordinations; none, in that bidding prayer, which was enjoined by Elizabeth in 1559 to be used by the clergy, which was not altered by a committee appointed in 1661 to prepare a form of prayer before the sermon, and which describes the king as " supreme governor in these his realms, and all other his dominions " and countries over all persons and in all causes ecclesiastical as well " as civil." I know not whether this was one of the propositions which the ecclesiastics in the reign of Charles II. would have thought themselves bound to retain or to qualify. But I do know that ecclesiastics in the reign of James II. were not called upon to inculcate non-resistance by that danger from Popery to the king's person which led Cranmer and Latimer to insist upon the doctrine.

The transfer of the supremacy from the Pope to Henry VIII. made perhaps that capricious and sanguinary monarch more favourable to the cause of the Reformation. But however serviceable it might have been in protecting a newly established church, it may in later times have produced inconveniences not foreseen by our first reformers, and experienced, but certainly not remedied, by their successors. " Can any thing," says Warburton, " be " more absurd than that when the yoke of Rome was thrown " off, they should govern the new church, erected in opposition " to it by the laws of the old? The pretence was, that it was " only by way of *interim*, till a body of ecclesiastical laws could " be framed. But whoever considers that the body of canon laws " proceeded from and had perpetual reference to an absolute and " spiritual monarch, and were formed upon the genius, and did " acknowledge the authority of the civil laws, the issue of civil " despotism, I say, whoever considers this will be inclined to " think, that the Crown contrived *this interim* from the use the " canon law was of to the extension of the prerogative. However, " it is certain that the succeeding monarchs, Elizabeth, James " and Charles, prevented our ever having a body of new eccle- " siastical laws from a sense of *this* utility in the old ones, and

" degree, state, and vocation." But the laity, before whom they were to be read, are neither directly nor indirectly

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" a consciousness that if ever they should submit a body of new " laws to the legislature, the Parliament would form one alto- " gether upon the genius of a free church and state. This I take " to be the true solution of this mysterious affair, that wears the " face of so much obscurity and scandalous neglect." (Letter 81 of the Correspondence between the Bishops Warburton and Hurd.) I shall not presume to offer any advice to my ecclesiastical superiors about retaining or altering either the homilies or the canons. But if the Bishop be not mistaken, the constitution of the church may in some respects appear less favourable than I could wish, either to religious or civil freedom. It retains homilies which were necessary for the times, in preserving the person of the king from the machinations of Popery, and the principles of which were transferred to his power when his person was no longer in danger, and when his power, as at the Revolution, was more limited than it had been in the reigns of Edward, Elizabeth, and the Stuart line. It adheres, also, to canons which were borrowed from Popery—which are connected with the exercise of the king's power, not the safety of his person—which partake of the genius and perpetually refer to the letter of a civil code, " the issue of despotism," and which yet are intended to regulate the notions of clergymen upon the kind and degree of that allegiance which is due to the head of what we are accustomed to call a free church and state. Such is the result of Warburton's positions. It were indecorous, I grant, to talk of scandalous neglect; but it is venial, I hope, to allow something of " obscurity in " these matters." Ecclesiastics, however, are generally required to submit to them to a varying and indefinite extent, and politicians are not wholly unable to account for the continuance of this vague obligation. In the mean time, the silent and salutary influence of knowledge and civilization has done much in mitigating the evils flowing from positive rules and institutions, which they who introduced them chiefly intended for other purposes, and which they who now retain them are not accustomed to enforce with unabated rigour.

required to declare any *assent* to them as articles of faith, nor without the grossest absurdity could they have been called upon to *consent* to the use of them. But what is the obligation imposed upon the clergy, as teachers of the laity? They are to "read the homilies diligently and distinctly, that they may be understanded of the people." No express injunction, nor even tacit permission is given for reading them in any other place than the church, or at any other time than Sundays and Holidays, or for any other purpose than that of conveying instruction in "godly and "wholesome doctrine, and necessary for these times."

Doubtless, according to the doctrine contained in the homilies, Monmouth's invasion, as I said, amounted to rebellion, and, in the time of James, a minister reading those homilies in the church, might for several reasons take occasion to tell his hearers, that they contained doctrine *peculiarly* necessary for those times.

The principles which so long prevailed* in the church, on the divine right of kings and non-resistance, are strongly

* The political and religious disputes which preceded the reign of James I. will enable us to account for the lofty notions, which prevailed in that reign about kingly power, and we should always bear in mind that in opposition to the pretensions of the Papal See, the King of England had been declared Head of the Church, and that for this reason churchmen would be more strongly attached to the regal office. The events, which had recently occurred before the restoration of Charles II. were not likely to bring about any material alteration in the language or sentiments of ecclesiastics, who, like other men, would be strongly affected by particular and present circumstances in the adoption of general principles, and, like other men, might not always see the propriety of "submitting one general rule to another which is still more "general. (Paley on Religious Establishments, p. 575.) It becomes us at this time of day to make large allowances for what we think the prejudices and errors of our forefathers; and though it is impossible

inculcated in the homilies. "Let us consider the scriptures "of the Holy Ghost, which persuade and command us

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sible for me to commend the behaviour of the bishops to Monmouth at the time of his execution, I do not consider them as particularly blameable for the opinions they held upon the duty of obedience. Can the church boast of a prelate more learned, sagacious, meek, temperate and pious than Jeremy Taylor? Yet in his Ductor Dubitantium he holds the same language with the bishops of Charles and James's time on the rights of kings, and he endeavours to defend them, not only by the authority of revelation, but by the law of nature. He discusses the question at large in the third chapter of his third book, and he contends, that "not only good kings "must be obeyed, but that subjects have nothing to do, but some- "thing to suffer, if kings be evil and unjust, cruel and unreasonable, "enemies of their people, and enemies of mankind." In our own days I should be very sorry, if the doctrine of passive obedience were resumed in pulpits. But I should be equally and perhaps more sorry, if Christian teachers were directly or indirectly to expatiate upon the principles of resistance. Barrow furnishes us with a sure and a safe direction for our instruction. "Are the ob- "jections against obedience, so clear and cogent, as are the "commands which enjoin and the reasons which enforce it? Are "the inconveniencies adhering to it apparently so grievous as are "the mischiefs which spring from disobedience? Do they in a just "balance counterpoise the disparagement of authority, the violation "of order, the disturbance of peace, the obstruction of edification, "which disobedience produceth?" (Sermons, iii. 291.) I allow, indeed, that in the present improved form of society, there may be less necessity than our forefathers felt for insisting upon the duty of obedience; and I even contend that for our progress both in civil and religious liberty we are indebted to the violation of those very rules, which ecclesiastics in former ages carried to a most unreasonable excess. As to extreme cases, I would leave the speculative consideration of them to professed writers upon politics, and I know that when they occur in practice they usually suggest expedients which the minds of men are rarely unable to discern, or unwilling

" all obediently to be subject, first and chiefly to the King's " Majesty, Supreme Governor over all, and next to his

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unwilling to employ. " When we assert," says Mr. Hume, " that " all lawful government arises from the consent of the people, " we certainly do them a great deal more honour than they deserve, " or even expect and desire from us. Reason, history and experi- " ence show us, that all political societies have had an origin much " less accurate and regular; and were one to choose a period of " time, when the people's consent was least regarded in public trans- " actions, it would be precisely on the establishment of a new govern- " ment." The present state of France is one instance in proof of Mr. Hume's position. " In a settled constitution their inclinations are " often studied," and, I add, that their rights ought never to be vio- lated, nor their interests ever neglected. In this country " the " plan of liberty," as Mr. Hume observes, " is settled, and its " happy effects are proved by experience—The people cherish " monarchy, because they are protected by it," and " the mon- " arch," if he is wise, " will favour liberty, because he is created " by it," and because for every purpose of reasonable and virtu- ous ambition he is strengthened by it. (See Hume's Essays on the Original Contract, the Coalition of Parties, and the Protestant Succession.) If I were asked the ground of my own obedience, I should readily answer with Mr. Hume, " because society could " not otherwise subsist." If I were farther asked why, as an instructor, " I should always incline to *their* side, who draw the " bond of allegiance very close, and consider an infringement of " it as the last refuge in desperate cases," I should answer, that if the principle of obedience were slackened among a people, society could not subsist long or well. But such an inclination would by no means lead me into the gross and perilous absurdities of passive obedience; and when the advocates for those absurdities shall " carry their doctrine to such an extravagant height as po- " sitively to exclude the exceptions" arising from " extraordinary " cases," then I shall think it " necessary to insist on these " exceptions, and defend the rights of injured truth and liberty." (Hume on the Original Contract, and on Passive Obedience.)

After

" honourable Council, and to all other Noblemen, Magis-
" trates and Officers, which by God's goodness be placed

After all the decrees of dogmatists, and all the subtleties of lawyers, *salus populi* is the *ultimate* rule, to which every man of reflection tacitly or expressly refers every principle and measure of legitimate government, and every political *right* and *duty* both of governors and the governed. He will submit to inconvenience and wrong, because from experience he must know that submission in most cases is a less evil to himself and to society than resistance. But from that which makes submission necessary he will not transfer the name of good, to that *to* which he submits. He will render to Cæsar, not indeed all the things which Cæsar under all circumstances may be disposed to claim, but all, however many or however precious, which by the authority of public law framed for the public weal, do really belong to Cæsar.

Looking to facts, not to theories, and collecting from them the resemblances and differences of human characters and human affairs, he will come to some such conclusion as the following, upon the actual condition and conduct of subjects and Princes.

With judicious culture, and in a favourable climate, Liberty, he will think " stands like a fair and vigorous tree, teeming with " the richest and noblest burthen, and by its comeliness inviting " the beholder to repose under its shade." Yet when neglected it " is soon seen with all the marks of decay." When overnursed, it " exudes from its sickly trunk a number of deformed fungusses, " which call themselves of that tree because they stick upon its " surface, and suck out the little remainder of its sap and spirits." (See Preface to the first edition of Warburton's Julian.) Even where it has assumed the most lovely form, the meanest vermin are silently busied in tainting its branches, and the " wild boar " from the forest" is impatient to root it up. But Royalty is a sturdier plant, which finds sustenance for itself in almost every soil, increases in strength and bulk, whether the fruits which it bears be noxious or wholesome, flourishes under the scorching sun,

yields

" and ordered. For Almighty God is the only Author and " Provider for this fore-named state and order, as it is writ-

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yields very rarely to the rude tempest,

" et quantum vertice ad auras
" Ætherias, tantum radice in Tartara tendit."

I do not profess to have read more than scattered quotations from the writings of Bracton and Fortescue. I had indeed been accustomed to consider them as " the two most learned, and al- " most the only learned of our ancient lawyers." (Warburton.) But I lately have learned from Bishop Warburton that they not only bear express testimony " to our free and limited government, " but deduce the origin of civil rights from the people." (See Warburton's Letters, 81.) I would be understood to state the fact, upon the strength of Warburton's assertion, but not to express an entire and unqualified assent to the principle, which Warburton held in common with Bracton and Fortescue.

While power is exercised for the benefit of the people, few mischiefs can arise from theories upon the origin of government.

One of the fundamental articles of my political creed may be found in the language of Elizabeth to her Parliament. " I " know," said the Queen, " that the commonwealth is to be " governed for the good and advantage of those that are committed " to me, and not of myself to whom it is committed: and that an " account is to be one day given before another Tribunal."

Upon the same article of my creed I will make a second appeal to regal authority in James the First,

" I do acknowledge that the special and greatest point of " difference that is betwixt a rightful King and a usurping tyrant " is in this, that whereas the proud and ambitious tyrant doth " think his kingdom and people are only ordained for the satis- " faction of his desires and unreasonable appetites; the righteous " and just King doth by the contrary acknowledge himself to be " ordained for the procuring of the wealth and prosperity of his " people, and that his greatest and principal worldly felicity must " consist in their prosperity."

Such

" ten of God in the Book of the Proverbs: Through me " Kings reign, through me Counsellors make just laws, " through me do Princes bear Rule, and all Judges of the " Earth execute Judgment: I am loving to them that love " me. Here let us mark well and remember, that the high " power and authority of Kings, with their making of Laws, " Judgments and Offices, are the Ordinances not of Man, " but of God; and therefore is this word (through me) so " many times repeated *." " Let us all mark diligently, " that it is not lawful for Inferiors and Subjects, in any case, " to resist and stand against the Superior Powers: For St. " Paul's words be plain, that whosoever withstandeth shall " get to themselves damnation: For whosoever withstandeth, " withstandeth the ordinance of God. Our Saviour Christ " himself and his Apostles received many and divers injuries " of the unfaithful and wicked men in authority; yet we " never read that they, or any of them, caused any sedition

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Such is the evidence which the public address of a King to his Parliament supplies upon the duties and the uses of the kingly office; and well it were if the actions of the great were correspondent to that test which he upon another occasion laid down for enabling us to appreciate the sincerity and honour of a Sovereign.

" It becometh a King, in my opinion, to use no other elo- " quence than plainness and sincerity. By plainness I mean, " that his speeches should be so clear and void of all ambiguity " that they may not be thrown, nor rent asunder, in contrary " senses, like the old Oracles of the Pagan Gods. And by sin- " cerity I understand that uprightness and honesty which ought " to be in a King's whole speeches and actions; that, as far as a " King is in honour erected above any of his subjects, so far " should he strive in sincerity to be above them all, and that his " tongue should be ever the true messenger of his heart. And " this sort of eloquence may you ever assuredly look for at my " hands."

* First Part of Exhortation concerning Good Order, &c.

" or rebellion against authority."—" The wicked Judge Pi-
" late said to Christ, Knowest thou not that I have power
" to crucify thee, and have power also to loose thee? Jesus
" answered, Thou couldest have no power at all against me,
" except it were given thee from above. Whereby Christ
" taught us plainly, that even the wicked Rulers have their
" power and authority from God, and therefore it is not
" lawful for their subjects to withstand them, although they
" abuse their power: Much less then is it lawful for subjects
" to withstand their godly and Christian Princes, which do
" not abuse their authority, but use the same to God's glory
" and to the profit and commodity of God's people*."

These general doctrines were, I doubt not, believed by the Bishops who attended Monmouth, and who in all probability thought them necessary for the times in which they lived. But they must have been aware that the homilies were *farther* considered as the great storehouse of arguments, fit " to be diligently read and understanded by the people," in opposition to the church of Rome, and whether they looked to the reign of Charles II. or of his successor, they must have thought it not quite unnecessary to employ those homilies for the purpose of fixing their hearers in their attachment to the cause of Protestantism. The sixth and last part of the homily against disobedience and wilful rebellion is *replete* with complaints and accusations against " the
" Injuries, Oppressions, Raveny, and Tyranny of the Bi-
" shops of Rome, usurping as well against their natural
" Lords the Emperors, as against all other Christian Kings
" and Kingdoms, and their continual stirring of subjects
" unto Rebellions against their Sovereign Lords." The subject is resumed in the third part of the exhortation, added in the reign of Elizabeth. " Let us all fear the most detes-
" table vice of rebellion, ever knowing and remembering
" that he that resisteth or withstandeth common authority,
" resisteth and withstandeth God and his Ordinance, as it
" may be proved by many other places of holy Scripture.

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* Second Part of the Sermon of Obedience.

" And here let us take heed that we understand not these, " or such other like places (which so straitly command obe- " dience to Superiors, and so straitly punished rebellion and " disobedience to the same) to be meant in any condition " of the pretensed or coloured power of the Bishop of " Rome. For truly the scripture of God alloweth no such " usurped powers, full of enormities, abusions and blas- " phemies. But the true meaning of these and such places " be to extol and set forth God's true Ordinance, and the " authority of God's anointed Kings, and of their Officers " appointed under them. And concerning the usurped " power of the Bishop of Rome, which he most wrongfully " challengeth, as the successor of Christ and Peter; we " may easily perceive how false, feigned, and forged it is, " not only in that it hath no sufficient guard in holy Scrip- " ture, but also by the fruits and doctrine thereof."

Knowing the indolence which prevents men from consulting evidence to which they are merely referred, and the little attention which is paid to general assertions, I have, even at the hazard of appearing tedious, produced such passages as are suited to my purpose. Now it is apparent from those passages, that the dangers to which the people of England were exposed from the See of Rome are pointed out in the very same homilies that inculcate and explain the duty of obedience to kings; and if the Bishops were impelled by a general sense of their duty to read and expound them in the prison for the edification of Monmouth, as a member of the Church of England, we can hardly suppose that they used one part, and omitted another. Their royal master, no doubt, would have commended them for bringing home to the conscience of Monmouth the guilt of rebellion; but would he have been equally pleased, if he had been told that Monmouth had heard from their mouths the bitterest reproaches against the church of Rome*?

* We know the command which James issued to the Bishop of London, to suspend Dr. Sharp, who disregarding the King's injunctions to avoid controversy, had particularly distinguished himself

It is upon the present occasion important for us to ascertain, not only what are the doctrines really maintained by the Church in our homilies, but what directions are given for the use of them; and as some of those doctrines are closely connected with the case of Monmouth, the Bishops might perhaps have been justified in communicating them to him, as holden by the church, and fit to be taught by the minister before a congregation. But that communication, if it had been made, ought to be considered as an act of mere personal *discretion*, and not of official obedience to any directions given in the rubric, or any other part of the ecclesiastical code. The homilies, as I have repeatedly granted, might have been read for the instruction of Monmouth while he was in prison. But I have no where met with any injunctions for ecclesiastics to demand either general or particular confessions upon any point of faith or practice, *as contained in the homilies.* Pity and good-sense might have warranted the Bishops in requiring general or particular confession upon those actions which were inconsistent with the common rules of morality, or the common precepts of religion. But neither the rubric, nor any injunctions connected with the homilies *compelled* them to call for particular confession under the circumstances in which Monmouth was placed.

Mr. Fox, I suppose, like the generality of laymen, knew little of the rubric or the homilies. But if his knowledge of them had been quite as accurate as that of ecclesiastics ought to be, he would have laid the blame, so far as blame may be due, not upon the rigour of ecclesi-

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by his opposition to Popery, and by his contempt of those, "who "had been induced to change their religion by such pitiful argu- "ments as the Romish missionaries could suggest." We farther know, that when the bishop declared his inability to obey the commands of his sovereign, James resolved to punish him, and "for "that purpose employed an expedient," says Mr. Hume, "the most "illegal and the most alarming."

astical rules, but upon the zeal of ecclesiastics. Whether the Bishops can be defended upon other grounds than the authority of the rubric is a question upon which the decision which satisfies other men may not be satisfactory to me, and *versa vice* the reasoning which convinces me, may not convince them. According to my notions of decorum and humanity, the Bishops would have done well not to have insisted upon the topic of obedience with such earnestness at such a *time*. I do not accuse, nor even suspect them of servility, or hypocrisy, or habitual unfeelingness. But I shall ever maintain, that upon this one occasion their attachment to a favourite doctrine carried them too far, in imbittering the sorrows of one who was "at the point to die" —in ruffling the spirits of one who had seriously prepared himself for eternity—in calling for "ten words," which if they had been uttered, might have been imputed to fretfulness under the importunity of his advisers, or to terror at the approach of death—and, above all, in presuming that the repentance of Monmouth was imperfect, while they were bending the knee before the Father of that Lord "of whom "the whole family in Heaven and in earth is named"—while the headless trunk of a fellow-creature lay weltering in blood before their eyes—and when his soul had passed into the presence of that Being, "who trieth," and is alone worthy to try, "the heart and the reins." What was the language of their dying master to a thief, who in one short sentence had expressed his sudden and general contrition? It was this: "Thou shalt be with me in Paradise." What were the prayer, and the apology which he offered up for his own murderers, who had made no confession, and perhaps felt no remorse? It was this: "Father, forgive them, for "they know not what they do!" Weak and sinful creature, whosoever thou art, king or subject, bishop or curate, "go "and do thou likewise!"

They who censure Mr. Fox for his strictures upon the questions which were proposed to the Duke of Monmouth, will hardly refuse their commendation to his remarks upon the omission of the Bishops to press their penitent to the only declaration by which he could make any satisfactory

atonement to those whom he had injured*. "Monmouth, "in the paper published at Lyme, had accused his Sove- "reign of having burnt London, murdered Essex in the "tower, and poisoned his brother, and there is no circum- "stance from which we can collect that he himself believed "these horrid accusations to be true." But the Bishops, who knew the fact, were silent upon it. The critics, who must have felt that Mr. Fox could not be wrong in condemning that silence, have not been courteous enough to say that he was right. In his better days Monmouth would have blushed at the meanness of a lie; and if he had been seriously exhorted upon a subject, which in the awful hour of death left no room for self-delusion to the weakest, or self-approbation to the most obdurate of mankind, surely he would in a moment have trembled at the recollection of his guilt, and spontaneously have uttered ten times ten words of humble and contrite recantation.

Let us turn to another interesting scene in another country, not very distant from us, and now more closely united to us by a common interest in government, liberty, commerce, literature and science.

Judicious and humane was the behaviour of Mr. Chartris and Mr. Annand, who attended the unfortunate Argyle. When Chartris came to him, "Argyle's first caution to him "was, not to try to convince him of the unlawfulness of "his attempt, concerning which his opinion was settled, "and his mind made up†." The subject, however important it might appear to Chartris, was not resumed by him while Argyle was in prison, nor was it discussed when he was on the scaffold, though he there had the additional assistance of Mr. Annand, who, "in all probability, was "an episcopalian, and had been sent to him by the go- "vernment." Just before Argyle's death, they prayed with

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* See page 272, 3 of his History.

† Page 200.

him, but did not dispute *. They reminded him, indeed, that "in his prayers he had said nothing of the Royal "family." But they were satisfied when "he referred them "in this matter to what he had said at his trial concerning "the test." When he had "addressed the people on the "south side of the scaffold, Mr. Annand repeated his words "with a louder voice. When he addressed them a second "time, in the same or the like words, on the north side, Mr. "Annand repeated them again, and added, This nobleman "dies a Protestant." But there was no altercation whether

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* The English rubric makes no distinctions founded on the fortunes or titles of offenders, and upon the greater danger of their example from their greater rank. Yet, Monmouth was treated with a degree of severity not usually employed with ordinary malefactors. They are exhorted in the prison and at the place of execution to confess the fact for which they are to suffer, or some other heinous crime, which has, with probability, been imputed to them, and the discovery of which may procure redress for the injured party, protect innocent men from false accusation, or lead to the detection of unknown accomplices. But it rarely happens, that the Ordinary, in consequence of their denial, forbids them to partake of the sacrament. Monmouth, acknowledged the invasion, and does not appear to have vindicated it—he acknowledged, also, his intercourse with an unfortunate lady, he attempted to justify it, and the notoriety of the fact may be thought to warrant the Bishops in their endeavours to correct his mistake, and awaken his conscience. Still, it is to be observed, that upon criminal connections of this kind, other offenders under sentence of death are seldom or never urged to make *special* confessions. Possible, too, it is, that if Monmouth had assented to the favourite opinions of the Bishops upon non-resistance, a subject upon which the rubric is silent *as to confession*, he might have met with milder treatment upon another subject, which under *some* circumstances has been supposed to fall under the directions given by that rubric for the conduct of a minister towards notorious evil livers who wish to attend the sacrament. It is very painful, but very necessary for me, to be thus minute.

the episcopalian form of Protestantism, adopted by Annand, or the Presbyterian form, professed by Argyle, was most warranted by the authority of scripture, or most likely to conduct Argyle to future happiness.

Unmoved by the gentle entreaties of Monmouth, or by his repeated declarations, or by his determined resistance, the Bishops continued to harrass him, even to the last minute, with unwelcome rebukes and unavailing expostulations. But Chartris and Annand, though perhaps not inferior to the Bishops in loyalty and orthodoxy, preserved more respect for fallen greatness, and more tenderness for a conscience which, on the subject of his invasion, must have appeared misguided to both of them. They thought it no breach of allegiance to their earthly master, to be content, on this one occasion, with serving their heavenly. However adverse to the political cause of Argyle, and however convinced of his political guilt, they suffered themselves to be hurried into no offensive importunity. They resisted no distinctions which Argyle might have made between invasion and rebellion. They pronounced no harangues upon the religious obligation to passive obedience. They demanded no particular confession. They offered up no petition for the acceptance of Argyle's "general and imperfect re-"pentance."

At the execution of Mary Queen of Scots, even the Earl of Kent, when his sense of propriety, or of humanity had compelled him to repress the brutal zeal of Fletcher, permitted Mary to pour forth her prayers without interruption. The Bishops, after they had interposed in checking the vulgar taunts of the Sheriff who had insulted Monmouth, again expatiated upon the topics, which they had been again and again desired to dismiss, and squandered in fruitless and senseless wrangling those precious and still-remaining moments which ought to have been employed wholly in humble and fervent supplication. Yet their general wisdom and general goodness are indisputable, and the record of their failings may be of use, as a restraint upon the pride of other men less wise and less good, and upon the zeal of such ecclesiastics as may hereafter be called upon

to perform the same melancholy duties to a public criminal.

" Mr. Fox," says the Reviewer, " where he enters into " the last scenes of the lives of those who suffered for re- " bellion under James, exceeds in length what might be " allowed to the close of an historical eulogy." " The ob- " ject of all this diffusion is to recommend to our affections " the memory of these men; and affection, we know, will " make men look on many crimes in its object as the re- " sult of fine qualities, and political crimes ultimately as " virtues. In cases in which there are no materials to work " up, or force into such artful eulogies, accounts solicitously " particularised may introduce apparent but false occasions, " to place the conduct and memory of those who con- " demned the act of those political martyrs, in lights both " odious and ridiculous." I do not distinctly understand what is meant by a " false occasion." But I do suspect that in the foregoing passage there is a lurking insinuation that Mr. Fox had stepped beyond the confines of history into the regions of poetry.

" Καὶ πᾳ καὶ Ϛροτῶν φρένας
" ὑπερ τὸν ἀληθῆ λόγον
" δεδαιδαλμένοι ψένδεσι ποικίλοις
" ἐξαπατῶν : μῦθοι *."

The question to my mind is simply this. Did the circumstances which Mr. Fox relates, pass in the prison, and on the scaffold, or did they not? If they did, my judgment upon the merits of Mr. Fox's History, as a composition, tells me that in his manner of relating these circumstances, Mr. Fox has performed the part of a faithful and wise historian. If they did not, my sense of morality tells me that he is a flagitious slanderer. As to the *diffusion* to which the Reviewer objects, it is merely a question of taste. If it be converted into a question of party, there are men to whom " *disticha*"

* Pind. Olymp. 1.

might appear "longa," if employed to throw blame upon the Bishops who attended Monmouth. But there are other men, who would be inclined to say

"Non sunt longa, quibus nihil est quod demere possis*."

With a delicacy most honourable to his discernment and his feelings, Clarendon informs us that "the saintlike "behaviour of the blessed martyr, and his christian courage "and patience at his death, are all particulars so well "known, and have been so much enlarged upon, in a treatise "peculiarly writ to that purpose, that the farther mention-"ing it in this place would but afflict and grieve the reader, "and make the relation itself odious as well as needless†." But if Clarendon had "told" the melancholy "story" of that time, he would have found nothing to censure in the conduct of Juxon, and the commendations due to that prelate have been amply bestowed by many writers. If, however, Charles had been attended by the Puritan teachers of the age, they would, in all probability, have insisted on controversial topics; and for the honour of God, and what they called the true faith, would have endeavoured to make a convert of the royal sufferer. Doubtless, if such a frightful scene had passed, it would have been the duty of historians to reprobate the unfeeling bigots.

Upon looking into Gilbert Stuart's History of Scotland, I find that he has employed nearly four pages closely printed in octavo, upon the dismal circumstances which occurred the night before the execution of Mary; and that to the odious spectacle in the hall at Fotheringay he has assigned nearly five pages more. I see not one particular which a good man would wish to be omitted, and, in this part of his history, the narrative of Stuart, in clearness, fullness, and pathos, surpasses even that of his eloquent predecessor, Dr. Robertson.

I am really unable to discover the ground upon which

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* Martial, lib. ii. Ep. 77. † Hist. book xi.

Mr. Fox can be accused of employing "diffusion to make "men look upon the *crimes* of the object of their affection "as the result of *fine* qualities, and political crimes ulti- "mately as *virtues*."

If James had been successful in his attempts to establish Popery, and to acquire what the Reviewer calls, "such "a share of superiority and power as would have placed "absolute authority too nearly within his reach," his opponents *, I hope, would have been the objects of affection

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* They who yielded to the King in civil, but resisted him in ecclesiastical affairs, have little claim to praise, either for the keenness of their foresight, or the consistency of their logic. When the King is called *supreme*, over the church, we presume that he is bounden to support that church, as it is recognised by the legislature. But, in point of reasoning, why should supremacy imply unlimited and arbitrary power in things civil, when it does *not* imply such power, even according to the avowed notions, and resolute measures of James's Bishops, in things ecclesiastical? In point of fact, if the King should gain an excessive ascendancy in the state, and if it be criminal to resist him in his endeavours to gain it, what practical security is there for the church, when it becomes his will and pleasure to introduce by force a new form of religion, and to set himself, or the Bishop of Rome, or the Patriarch of Constantinople at the head of it? In such a case, he might with some plausibility urge the plea of conscience, and duty towards the Deity; a plea, which if alleged in vindication of his encroachments upon our civil rights, would hardly impose upon the meanest understanding.

I have in page 711 observed, that the Bishops set up a distinction which the service, canons, and homilies of the church do not. But the writers of that service always assumed, that the ecclesiastical supremacy of the King, which had been originally conveyed to him on the introduction of Protestantism, would be employed by him uniformly and solely for the protection of the Protestant cause. The fault of the Bishops was their want of discernment, that the supremacy of the Sovereign in the state, also, was in its principle conditional, and implied an obligation

to the accuser of Mr. Fox, as well as to myself. Many of the crimes imputed to them would be admired by us as "the result of fine qualities." Their "political crimes" would have been considered, not "ultimately," but primarily and unmixedly, "as virtues." The sufferer would be called by us a hero. We should find a patriot in the rebel, and a martyr in the heretic. As to Russell and Sydney, I shall not dissemble that their memory will ever be precious to me, that I shall ever love their virtues, ever reverence their talents, ever lament their fate, and ever execrate the hand which signed the warrant for their death. Sydney was innocent even of political crimes, and Russell suffered a punishment far exceeding his legal guilt, for the act by which he was tried had expired.

Doubtless Mr. Fox holds up to our admiration the integrity and magnanimity of Argyle, and he represents the "fine qualities" of Monmouth so as to conciliate our affection and esteem. But he has so described Argyle's invasion as not to impress us with any favourable opinion of his discretion, a quality which, upon such occasions, Mr. Fox has shown to be inseparable from virtue.

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which lay upon him to govern his subjects in their temporal concerns, according to the directions and by the authority of the laws.

The plain truth is this. An English Sovereign is no more authorised to turn a free into an arbitrary government, than to raise a Roman Catholic upon the ruins of a Protestant church. The vestiges of a change in religion may be more distinct, and the process more rapid, than those of a change in the affairs of state. But the danger in the latter case, is not, therefore, less; it may even be greater from the circumstance of gradual and silent introduction; and when the evil is at once conspicuous, imminent, and radical, the right and even the duty of resistance are indisputable. They, at least, who controvert the foregoing positions are alike hostile to the Reformation and the Revolution.

Of Monmouth Mr. Fox informs us that "he possessed "qualities which, in a popular government, were far more "effective than the most splendid talents *—that during the "life of Charles his youthful mind was fired with ambition, "and that he considered the putting of himself at the "head of a party, as the means by which he was most "likely to attain his object—that his declared enmity to his "uncle, the Duke of York, was one of the circumstances "which overpowered the obligations of filial duty and "gratitude, and seduced him into such conduct as, in any "other subject might have been meritorious, but in him "was doubtful and *extremely culpable*—that his attachment "to the Protestant religion, and to the civil liberties of the "country co-operated with his friendship for some of the "Whigs, his admiration of their talents, and his love of "their principles, in suggesting to him high schemes of "ambition, of which it is difficult to discover the precise "object †—that his invasion in the reign of James was "ill-planned and ill-executed—that he could have no pros-"pect of efficient aid from Scotland—that he was destitute "of money—that he neither gained nor had reason to ex-"pect support from the great families—that he confided "weakly in the momentary breath of popular applause—"that he published a declaration, equally unsatisfactory to "the commonwealth men ‡, the favourers of hereditary "right, and the more rational advocates of monarchy—"that his flexibility had degenerated into a habit §, which "made him often follow the advice, and yield to the en-"treaties of persons whose character by no means entitled "them to such deference—that, by the advice of Grey, to "whom he was partial from long friendship, and of Fer-"guson, whom he never could have mistaken for an honest "man, he had been persuaded to the *unjustifiable* step of "declaring himself King—that the most guilty act of his "life was lending his name to a declaration which was

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* Page 167. † Page 168. ‡ Page 233. § Page 271.

" published at Lyme, which accused the King of being an " incendiary, a murderer, and even a fratricide; and that " the guilt of these atrocious calumnies is heightened, be- " cause he does not himself appear to believe them to be " true." In these representations of Monmouth's character and actions, I see no traces of any attempt to recommend his *real* " crimes to our affection," to throw an air of " vir- " tue over his political crimes," or to represent them as resulting so much from his " fine qualities," as from weak- ness in his judgment, and excess in his ambition.

At the close of some very severe remarks made up- on the censures which Mr. Fox passed on the Bishops who attended Monmouth, and on the " morose and illiberal " bigotry" which Mr. Fox is accused of indulging against churchmen and the church, the critics of whom I have been speaking have thus written: " Infidelity," say they, " has its bigotry as well as superstition, and is as rabid and " relentless."

That infidelity, as well as superstition, is accompanied by bigotry I readily admit, and the events of our own times have given us melancholy proofs that, during the short career of its triumphs, it can be " as rabid and as relent- " less." But why is the general observation introduced in *this* place? Will the Reviewer take upon himself to justify to their full extent the political tenets of those churchmen who are the objects of Mr. Fox's indignation as an historian? Is the indignation which Mr. Fox upon *one* occasion expresses against such members of the Church of England so unquali- fied and so unrelenting, that it was impossible for him to feel and avow it without a total disbelief, and even an inveterate hatred of Christianity itself? Was it decorous or honour- able in the Reviewer to throw out a general charge of this kind without attempting to support it by particular pass- ages, bearing the most unequivocal marks of determined and incorrigible infidelity? Will the Reviewer suspect me of any predilection for infidelity or disloyalty, because when a schoolboy I maintained indignantly, as Mr. Fox has since done calmly, that the order of words was not acci- dental in a certain formulary, for which " chicane in law, " and casuistry in lawn" have not yet produced such proofs

as convince me that the substance of that formulary is warranted by the constitution, or by the scriptures—because I do not class passive obedience and non-resistance *

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* I suppose that scarcely any ecclesiastic of our own days could conscientiously declare what Burnett calls *a special assent to every particular* in the homilies concerning obedience, and against wilful rebellion; and even upon the main of the doctrine that is taught in them there is a general, though tacit consent to allow such difference of opinion, as it were not very easy, nor indeed very prudent, to limit by a series of definite propositions. In veneration for the Gospel, in submission to the laws, and fidelity to the throne, the scholars of Locke and Hoadley have little to fear from comparison with the admirers of Filmer and Atterbury. For my part I hold myself, as a Christian, bound to obey the laws of my country, and dutifully to serve, honour, and submit to the powers by which those laws are enacted and administered. But I also hold that, as a Christian, I am authorised to venerate and to maintain the civil rights of my countrymen. I therefore shall always lament the indiscretion of ecclesiastics, when they contend for opinions, which in their legitimate and practical consequences, lead to the extravagancies of Rousseau, where he tells us that "Le Christianisme ne prêche "que servitude et dépendance. Son esprit est trop favorable a "la Tyrannie pour qu' elle n'en profite pas toujours. Les vrais "Chretiens sont faits pour etre Esclaves." (Lettre a M. de Beaumont, p. 198.) Anxious for the honour of my religion, for the comfort and instruction of my fellow Christians, and for the happiness of my fellow subjects, I shall always declare in the words of an eloquent prelate, "That grandeur and elevation of "mind, that sublimity of sentiment, that conscious dignity of our "nature, redeemed at so high a price, which *true Religion* keeps "alive; which Holy Scripture dictates; and which the Spirit "of the Lord inspires, will be ever pushing us on to the attainment and preservation of those *civil Rights* which we have "been taught by Reason to know are ours; and which we have "been made to feel by experience, are, of all Ours, the most "indispensible

among the articles of religion, which are to regulate my belief, or the political maxims which are to guide my con-

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" indispensible to human happiness." (Warburton's Alliance, page 258.)

Among the apologies which Mr. Hume adduces for the prejudices and faults of the Stuarts, and some of which it were unjust to reject indiscriminately and totally, he says, " the flattery " of courtiers also blinded them, and above all that of the clergy, " who from several passages of the Scriptures, and those wrested " too, had erected a regular and avowed system of tyranny and " despotic power." (Essay on the Protestant Succession.) I know not the value which other men may set upon the opinion of Mr. Hume. Yet I see with great satisfaction that he throws the blame not upon religion, but the teachers of it, and with great satisfaction, also, have I noticed the incidental and indirect testimony which other unbelievers have borne to the political usefulness, or at least harmlessness of the Scriptures. If they had contained passages which by a fair construction were favourable to the cause of despotism, what occasion was there for theologians to *wrest* any texts? and that texts were so wrested was the opinion not only of Mr. Hume, but of many learned and sincere believers. But if it be said that the Scriptures in the real and obvious sense of words countenanced despotic power, then surely we have stronger reason for admitting the justness of Mr. Hume's remark, that " there never was a grosser contradiction than ap- " pears between the doctrine of passive obedience, and the resist- " ance which the advocates of that doctrine made to James the " Second at the Revolution." (See Hume's Essay on the Parties of Great Britain.)

Upon this *supposition*, I must acknowledge the inconsistency, while I honour the sincerity and the courage of the dignified ecclesiastics. But rejecting the supposition itself, I would make many allowances even for their errors, and as to the great bulk of the clergy I should with some qualifications assent to the excuse which a very ingenious prelate has made for them. " It " is no wonder the Clergy should be most solicitous about what " was their proper care; what they best understood; and what " was

duct—because I have long been enamoured of those principles of justice, benevolence and equality, which form the

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" was then deemed to be in most danger: That if they knew " little of the nature and rights of society, they might be well " excused, as they had been misled by a set of *Court Divines*, " who had betrayed and sacrificed the Principles of the *Reformers* " to the practices of James and Charles the First's Ministers; " and as they had never been taught by *experience*, the blessings " of a free Government, regulated upon true principles." (Warburton's Sermon on the Suppression of the Rebellion.)

For a bias in the minds of ecclesiastics towards such a degree of regal power as might eventually endanger the blessings of a free government, I should sometimes be disposed to account, not from servility, not from arrogance, not from a tyrannic temper, but from that intellectual weakness against which even the experience of their countrymen since the Revolution has not been sufficient to preserve every individual, whether in the clerical profession, or indeed out of it. I should not upon every occasion be incensed against unthinking persons, when I was told by them, that the Scriptures are rather favourable to absolute monarchy, because I have seen some *approaches* to that tenet in writers whose talents, literary attainments and virtues I ought to revere.

Even the acute and sagacious author of the Fragment upon Government confesses, that in his youth, and during his residence in an English University, he had imbibed opinions similar to those which were entertained by many ecclesiastics in the reign of James. " I saw," he says, " strong countenance lent in the sa- " cred writings to monarchic governments, and none to any other. " I saw passive obedience stampt with the seal of the christian " virtues of humility and self-denial." (Page 47.) Such are the words of Mr. B. where he gives " a short sketch of the wander- " ings of a raw, but well-intentioned mind in its researches after " moral truth " Perhaps, he was then so content with looking to the " genius of the place he dwelt in, the authority of the state, " and the voice of the church in her solemn services," that he did not very often, nor very carefully consult his Bible, or, when he

true creed of a party * espoused by me in my youth, and after experience of its worth and usefulness, respected by

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he did consult it, his prejudices gave to his mind in the interpretation of it a bias which he afterwards could not resist, when the prejudices themselves had been corrected and renounced. Whatsoever may be the result of his subsequent enquiries, goodness of intention, I am sure, will never forsake him; and as his knowledge is now more extensive, and his judgment more mature, I should gladly submit to his consideration my reasons for believing him mistaken, when he supposed the doctrine of passive obedience to be warranted by the Scriptures.

"They lent," says he, "strong countenance to monarchic "government, and none to any other." Be it so. But do they, also, countenance the abuses of that government?

From the rise of the Jewish monarchy under Saul, and after the separation of the tribes into the governments of Judah and Israel, the sacred writers lived under kings—they were surrounded by kings in neighbouring states—they were subject to kings under the Babylonian and Assyrian captivities. But would Mr. B. refuse to the Eastern style of the sacred writers the privilege of using that lofty phrascology which we find in Homer, where kings are addressed, as Διοτρεφῆς, and Διογενῆς? Has he not often smiled at the inferences in favour of absolute monarchy, drawn from the well-known passage,

"εἷς κοίρανος ἔστω,
"Εἷς βασιλεύς!"

Does he imagine that the Poet meant to condemn aristocracies, or democracies, because he speaks respectfully of that regal form of government with which *alone* he, in all probability, was acquainted? Let Mr. B. reason in the same fair and plain way about the Jewish writers, and when the king is called "the Lord's "anointed," let him call to mind the Jewish ceremony of unction, and impute to the phrase no larger meaning than it conveyed to a Jewish

* Fox's History, p. 267.

me even in manhood and old age—because with Dr. Paley * I believe a religious establishment to be "no part of Christ-

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a Jewish ear. It was the sign of an office, to which great respect was due among the Jews, and indeed among every other people, where the title was used. But as to the modern notions of inviolability and sanctity, however countenanced they may be by the laws of modern states, they imply far more than any critic will assign to the phrase we are considering, in the sacred writers.

Do not the historical books record, and upon many occasions reprobate the crimes of the Jewish kings, both in their personal and regal characters? In their didactic writings, such as the Psalms and the Proverbs, is any praise bestowed upon the bad actions of monarchs? Are not frequent and earnest exhortations to good actions set before them? Do not the prophetic writings abound with bold expostulations addressed to wicked kings—with severe reproaches—with terrible denunciations of the vengeance which their enormities would bring down upon them and their subjects? Let us turn to the apocryphal books. Is there any mark of adulation in the answer made by a young man, and reported to a king? "Wine is wicked, women are wicked, *kings* are wicked, "all the children of men are wicked. As for the truth, it en- "dureth, and is always strong." (1 Esdras, ch. iv.) How can the pernicious effects of evil counsellors upon the measures of a government, or the happiness of a people, be more luminously described than in the book of Esther, where ministers are mentioned as "beguiling with their lewd disposition the innocency "and goodness of Princes, causing by fair speech many that are "in authority to be partakers of innocent blood, and enwrapping "them in remediless calamities?" (Ch. 16.) Do not the books of Maccabees contain precepts and examples which recommend to our esteem the efforts of patriotism engaged in vigorous resistance to oppressors? What do we read in the book of Wisdom? "Great men and judges and potentates shall be honoured—yet "is there none of them greater than he that feareth the Lord." "The Lord hath cast down the throne of proud princes, and set "up

* Chap. 10.

"ianity, but only the means of inculcating it"—because I hold civil and religious liberty to rest on the same ground

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"up the meek in their stead." (Ch. 10.) "All, except David, "and Ezekias, and Josias, were defective: for they forsook "the law of the most High, even the kings of Juda failed." (Ch. 49)

Now the sacred historian did not assume the office of an apologist, when he represented David as guilty of adultery and murder, and sinking under the terrors of an awakened conscience, after Nathan had upbraided him with his aggravated wickedness —the sacred historian did not lend any "strong countenance" to despotism, when he described David as gaining, and deserving to gain, the throne by successful opposition to a sovereign who was not longer worthy to reign—the sacred historian did not hold the language of flattery, but of justice, when he spoke of David as a man "after God's own heart;" for he applied the term, as scholars now apply it, to some eminently meritorious actions of David in his regal capacity. In profane history we meet with scattered instances where unwelcome truths were conveyed to the ears of kings, by the priestess of an oracle, by a faithful counsellor, by a personal friend, or by a philosophic churl. But among the Jews we find a *succession* of men, who thought themselves privileged by their prophetic office to advise, to rebuke, and to threaten their lawful sovereign, and who seem also to have availed themselves of the privilege frequently, boldly, and at the hazard of their liberty or their lives, from the caprice of profligates, or the vengeance of tyrants. With equal intrepidity they pointed their indignation against the deceiver and the deceived—against the "ancient and honourable heads" of a nation, "who caused "it to err—against the seers," who "ran when the Lord had not "sent them," "prophecied smooth things when he had not spoken to "them," "and shouted, peace, peace, when there was no peace"—against the priests "who strengthened the hands of the wicked," and perhaps boasted, "we are wise, and the law of the Lord "is with us"—against "the people, who when the prophets "prophecied

of general utility, and to be interwoven in the essential and vital principles of the English constitution—because while

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"prophecied falsely, and the priests joined hands with them, loved "to have it so."

Whatsoever may be the attachment of Christian potentates to the authority of national churches, it does not appear that prelates, or chaplains, or confessors were allowed to reprove their royal masters *publicly*; and when we find the Scotch Presbyterians alledging the precedents they had from the Jewish prophets for inveighing against the vices of their own monarchs, our understandings spurn at the fallacy of their logic, our sense of propriety revolts at the coarseness of their manners, and we impute even their well-founded reproaches, not to the magnanimity of virtue, but the audacity of fanaticism.

In regard to passages in the New Testament, quoted as they are, not from the gospels, for they are nearly silent on the subject, but from the writings of Saint Peter and Paul, I am sure, that so acute a reader as Mr. B. would acquit them of the mischievous tendency which has been imputed to them, if his meritorious labours in other researches were for a time suspended, while he examined the defence and explanations of those passages, for which the Christian world is indebted to Sydney, to Locke, to Hoadley, and other writers, not eminently favourable to the cause of despotism and non-resistance. To the general assertion of Mr. B. I would dispassionately and respectfully oppose the foregoing detail. If that excellent man had thrown out any strictures upon doctrines merely speculative, and as such, controverted among Christian polemics, I should have left it with other men to confute him. But when we are inquiring, "non disputandi causâ, sed ita vivendi" (Cicero pro Muræna)—when the question relates to a point of *fact* closely connected with morals—when we would settle, whether the sacred writings do, or do not, inculcate tenets most injurious to society, I cannot look with indifference upon what I believe to be the erroneous decision of so profound a thinker, and so honest a man.

I entertain the most profound respect for the talents and virtues of a Laud and a Tillotson, I prefer the moderation

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As to the virtues of humility and self-denial, I shall not, upon this occasion, fly for shelter to the distinction which Montesquieu has made between "counsels and laws" (Book xxiv, chap. 6.) In the obvious and familiar sense of the words, humility and self-denial are virtues, which in a state of moral discipline we are often required to practise, as men, and as subjects. Experience shows them to be connected with the peace of families, neighbourhoods, and governments. Philosophy will allow them to be *parts* of prudence, temperance, decorum, and submission to those laws, upon which the existence of society must depend. They have indeed their *boundaries;* and these boundaries will, by a discreet and impartial inquirer be discovered in the *well understood* principle of utility, for which Mr. B. himself strenuously contends, and upon which he states some political limitations in ch. i. sect. 43 and ch. iv. sect. 39, 40 and 41. "Utility," says Mr. B. "is that standard to which men in general "refer a law or institution in judging of its title to approbation, or "disapprobation." That principle enables us to understand whence it is, that, although "force is always on the side of the governed, "and governors have nothing to support them but opinion, yet it "is an opinion of an interest most powerful and constant," for "men are led to resign their own sentiments and passions to "those of their rulers, by a sense of the *public advantage*, which "is reaped from government, together with a persuasion that "the particular government which is established is equally advan-"tageous with any other that could be easily settled." (Hume's Essay on the First Principles of Government.) In that principle we see a reason, why governments, "in proportion as the *habit* "*of obedience*" (which according to Mr. B. constitutes their power) "is more perfect, recede from, and, in proportion as it is "less perfect, approach to, a state of nature." (Fragment on Government, book i. chap. 12.) Upon that principle, rightly explained, and rightly applied, I should maintain with Montesquieu, that "citizens of the Christian profession, being infinitely

"enlightened

of the one to the rashness of the other—because in the exoteric and esoteric doctrines of the English Church I have

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" enlightened with respect to the various duties of life, and hav-
" ing the warmest zeal to fulfil them, must be perfectly sensible
" of the rights of natural defence—that the more they believe
" themselves indebted to religion, the more they would think
" due to their country—that the principles of Christianity, deeply
" engraven upon the heart, would be infinitely more powerful than
" the false honour of monarchies, than the humane virtues of repub-
" lics, or the servile fear of despotic states." (Book xxiv. chap. 6.)

I once heard it remarked, that if the records of the crimes committed by monarchs are to be considered as satires upon the dignity of the monarchical office, no records are more full, nor any satires more poignant, than those which are read in the historical books of the Old Testament. It should be remembered, however, that of contemporary kings we have scanty and obscure accounts; and therefore the comparisons which we institute between the kings of Israel and Judah, and other sovereigns of the same ages, must be grounded on the mere probability, that as the people were more ignorant and ferocious, the rulers partook of the same odious character. But without giving an unqualified assent to the above-mentioned remark, I see in it truth enough to show, that no *improper* " countenance is lent" to worthless kings, in a book which frequently relates their faults, sometimes condemns them, but never attempts (as a late philosophical historian has done in the reigns of English kings) to vindicate, or even extenuate them. It must be owned, that when we read the actions of the Israelitish and Jewish monarchs, we do not very often find them entitled to moral approbation; and the same may be said of the impression made upon our minds by the histories of many other potentates, both ancient and modern. But would the Jews have been justified in revolting from every bad king, upon every strong provocation from their evil measures? I broadly and promptly say, they would *not;* and for this plain reason, because the consequences of frequent revolts would have been more pernicious than the consequence of general submission. Now as experience

met with no rule by which I am pledged to entertain any hatred whatsoever to Dissenters, whether Protestant or

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experience shows that in all other governments, similar consequences are nearly at all times to be apprehended, religion, surely, goes hand in hand with sound policy, when it generally and forcibly inculcates the duty of obedience—a duty which results, as do all other duties, after our notions of obligation, merit, and moral approbation have been analysed into their elements, from what upon the whole is our real interest, and the violation of which is productive of more misery than happiness, or, (as Mr. B. would say) "more pain than pleasure," not only by the positive appointments of political societies, but by the established and known order of those causes, which pervade the moral constitution of the world.

My opinion is, that there is not the smallest difference between religion and philosophy in the tendency of the moral principles which they inculcate, so far as those principles promote the public welfare of communities. Both are favourable to good order, favourable to obedience, favourable to the habit of honouring the king, as indeed civilization, as usage, as law, as the love of respect when due to ourselves, and the unperverted sentiments of the human heart, also, teach us to honour him. Both, likewise, are favourable to diligence, prudence, temperance, decorum, justice, self-command, reasonable self-love, benevolence and all those private and personal virtues which promote human happiness more constantly, and upon the whole more largely even than public virtues, which silently prepare and discipline the human mind for great exertion where the ends to which exertion is directed are visibly good, and which restrain our restless and irregular passions from disturbing society under the pretext, for such we experimentally know it often to be, of reform or improvement. Both, in effect, though with different modes of phraseology, represent princes as "ministers to us for good," as intended for "a terror "to evil doers," as "decreeing justice," as subject to those laws of the moral world by which authority, if well-employed, must be strengthened, and if ill-employed, may be weakened, as rulers

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Catholic—because "as much as lieth in me I would live," and exhort others to live, "peaceably with" the Lutheran,

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who ought to be "able men, men of truth," "men who hate "covetousness, men who should do no unrighteousness in judg- "ment, who should not respect the person of the poor, nor "honour the person of the mighty," men in whom it is "an abo- "mination to commit wickedness," men whom "mercy and "truth preserve," and whose "throne is upholden by mercy, and "established by righteousness," men, who when they will "no "more be admonished" are inferior to "a poor and wise "child," men, who when "their eyes and hearts are for the "shedding of innocent blood, for oppression and for violence," will not always be permitted "to reign, because they clothe "themselves in cedar," men, who when they "take the bad "counsel of the young, reject the sound advice of the old, answer "the people roughly, and say they will add to their burdens, "and not ease them," are in danger of incurring what Reho- boam experienced, when the tribes revolted against him, and chose themselves a king. Whether, indeed, we refer the punish- ments of wicked rulers to an ordinary or an extraordinary pro- vidence—whether we look upon them as events flowing from the same causes, which every where more or less govern the concerns of men, or as divine judgments, they are equally conformable to our sense of right and wrong, and are equally to be considered as proofs of the baleful consequences which bad policy and bad morals tend to produce in the condition of bad kings. The *principle* of utility then is *virtually* recognised in sacred history, though the *term* is found only in philosophical writings. But let us remember that the same principle puts us in mind "to "be subject to principalities and powers, to obey magistrates, "to be afraid of the powers, and to render tribute to whom "tribute is due, custom to whom custom, fear to whom fear, "and honour to whom honour."

The gospels, as I have observed, are nearly silent upon subjects purely political, and in the way of direct precept they lend little countenance to the advocates or to the opponents of absolute

Greek, Roman, and Genevan churches, and all other Christian societies—or, finally, because with the light of natural

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absolute power. He whose kingdom was not of this world made no opposition to Cæsar's government, or Cæsar's representative in Judæa. But even Milton, in defending the death of Charles the First upon the scaffold, says a learned and sagacious biographer, "can cite from the sacred writings of the Christians only "two or three passages, which prove nothing more than that "the blessed Jesus did not assign to monarchs all the attributes "which were given to them by the adulation of the world, or "feel for wicked sovereigns more respect than he entertained "for wicked men." (Dr. Symmons's Life of Milton, page 252.)

As to extreme cases, the Scriptures, then, I grant, do not lay down any general rules, which authorise resistance. But the same wariness is preserved in the more deliberate and important exercises of the human mind, in historical investigations of causes and effects, in the laws of civilised nations, and in all those systems of philosophy, which are founded upon experience, appeal to the sober judgment of mankind, and are adapted to the practical concerns either of private or public life. The habit of contemplating such cases may generate a predilection for political theories, compounded of assumptions, conjectures, and deductions from facts which have been arbitrarily selected for purposes of illustration or proof, and severed from other facts leading to other deductions. But a strong presumption against the truth of those theories may always be found in their want of conformity to the real situation of man, to his complex nature, and to his various and mutually dependent interests in a state of society.

I lament the errors of the advocates for non resistance, when they seem to me to misinterpret either the examples recorded, or the admonitions enforced, in holy writ. Let us, however, do justice not merely to the general rectitude of their intentions, but to the ocasional validity of their reasonings—let us acknowledge that the maxims of sages, and the decisions of lawyers, to which they occasionally appeal, evince the *previous* existence of a sentiment for the long continuance and wide extent of which we must be unable to account,

if

religion, and in the spirit of revealed, I think it my duty to be "kindly affectioned towards all Jews, Turks, Infi- "dels," Schismatics, "and Heretics," as belonging to "one" great "fold under" the care of "one" good "shep- "herd?" How does the sacred and indispensable duty of "doing good, especially unto those of the houshold of "faith," absolve me from the obligation to do good, if it be possible, to *all* other men? Are they not endowed, like myself, with rational faculties, capable of physical happiness, and social union, and placed, or at least believed by me to be placed, in a state of discipline, as subjects of reward or punishment in a life to come? Why then, should I "judge them," or "set them at nought," or, by my intolerance, "throw stumbling-blocks in their way" to the adoption of that religion, which I have embraced as true? "To their own master," as they are "fully persuaded in "their own mind, every one of them standeth or falleth. "Yea," I trust, "they will be holden up;" for, by methods and for purposes quite unknown to me, the moral Governor of the universe "is able to make them stand*†."

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if under *no* aspect whatsoever, and in *no* degree whatsoever, it be warranted by experience. Let us remember, that while they insist upon the decisions of Fathers, the decrees of Councils, and, as they believed, the commands of the Deity himself, they again and again argue upon the *principle* of utility, they *in effect* represent our interest as inseparable from our duty, and hold up, not only the moral turpitude of rebellion to our abhorrence, but the physical mischiefs of it to our fears:

"Naturam expellas furca licet, usque recurret."

* Romans, ch. 14

† I am glad that Jortin reasoned on the same principles with myself. "Them who are without God judges. He best knoweth "how to deal with the Pagan world in general, and in particular "with those Pagans who were so far estranged from Him as to fall "into

Anxious I shall never be to defend myself against such charges as infidelity or disloyalty, founded upon the ap-

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"into the Epicurean impiety. To his righteous judgment let us "leave them." (Jortin in his sixth Dissertation.)

Clemens Alexandrinus supposes, that the law of nature, as discoverable by philosophy, would save a heathen; and the principle on which he founds his reasoning, extends, surely, to all persons, who, having formed their moral and religious opinions honestly and seriously, act up to them, when formed, sincerely and steadily. "οὐ μόνον τοίνυν ὁ πιστὸς, ἀλλὰ καὶ ὁ ἐθνικὸς δικαιόπρακτα κρί-"νει. ἐπειδὴ γὰρ ἤδει ὁ Θεὸς, ἅτε προγνώστης ὢν, μὴ πιστεύσοντα τοῦτον, οὐδὲν ἧττον, ὅπως τήν γε καθ' ἑαυτὸν ἀνα-"δέξηται τελείωσιν, ἔδωκε μὲν φιλοσοφίαν ἀνθρώπῳ, ἀλλὰ πρὸ τῆς "πίστεως." (Stromat. lib. vi. p. 795.)

Having in page 426 mentioned with approbation the arguments which Pistorius has employed on the ends of future punishments, I am solicitous to avert from him and from myself the imputation of that singularity, which upon religious subjects is often thought to imply rashness. An opinion may not be the more probable nor perhaps, the more authoritative, because it was maintained by a father of the Christian Church. But if persons among them of acknowledged ability and piety have thought, that punishment as administered by the moral Governor of the Universe is intended, among other purposes, for the correction of the suffering offender, surely a believer in our own days may properly appeal to the testimony of such writers, and may justly contend, that upon the tenets which he holds in common with them, no objection ought to be raised against the sincerity of his own assent to the credibility of revelation, or his own reverence for the attributes of the Deity. Now I would refer you to vol. i. p. 352 of Jortin's remarks upon Ecclesiastical History, where you will find an introductory distinction made by Aristotle, between τιμωρία and κόλασις—"διαφέρει δὲ "τιμωρία καὶ κόλασις· ἡ μὲν γὰρ κόλασις τοῦ πάσχοντός ἕνεκά "ἐστιν· ἡ δὲ τιμωρία τοῦ ποιοῦντος." I would add (as Jortin does

probation and avowal of such tenets as I have just now stated. But I am not equally indifferent about the insulted

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does not refer) that the foregoing passage occurs in lib. i. cap. 10, of the Rhetorics, in the Cambridge octavo edition, of 1728. In conformity to that distinction Aristotle elsewhere, says, "ἡ γὰρ "τιμωρία παύει τῆς ὀργῆς, ἡδονὴν ἀντὶ τῆς λύπης ἐμποιοῦσα." (Ethic. Nicomed. lib. iv. cap. 5.) "μηνύουσι δὲ καὶ αἱ κολάσεις "γινόμεναι διὰ τούτων, ἰατρεῖαί γάρ τινές εἰσιν." (Lib. ii. cap. 3.) For ἀκολασία, and κεκόλάσθαι, see lib. iii. cap. 12. But we are chiefly interested in the passages which Jortin quotes from page 895 of lib. vii. and page 764 of Clemens Alexandrinus, in Stromat. (Paris edition) and in his reference to page 794 and the Notes. Clem. Alex. does not, in his *terms*, observe the distinction laid down by Aristotle, between κόλασις and τιμωρία, as may be seen in page 795. But it is apparent that he believed all future punishments to be corrective to the sufferer, and preparatory for the gradual attainment of greater or less degrees of happiness. Upon those degrees you may consult the Note in page 794, and the text in pages 865, 866. Jortin, on the question from page 895 of the Stromat. adds, "Origen was of "the same opinion, and perhaps carried it somewhat farther." As Jortin has not here employed either reference or quotation, I shall point out the places where Origen's sentiments may be found: see vol. i. pages 588 and 677 of the Paris edition, published in 1733; vol. iii. pages 267, 444; vol. iv. pages 16, 296, 560, 575, 640. The learned reader would do well to consult paragraphs 10, 16, 17, 23, 24, 26 of Huet's Origeniana.

Let me observe, that the purgation by air, water, and fire, which Virgil mentions in vv. 741, 2, 3 of the sixth Æneid, and which was to continue for a thousand years, seems confined to the souls, *Quibus altera fato Corpora debentur*. "De Heroum, "Philosophorum, et bonorum animabus quæ Plato addit, Poeta "tacet, nec adjicit quid de iis fiat, quibus tam alte labes ista "insidet, ut elui nequeat, qui tamen plures numero esse debent. "Scilicet hi jam ante in Tartarum erant detrusi." (See Excurs. 13, of Heyne upon the sixth Æneid.)

memory of a most beloved and respected friend, and in justice to him I will produce from his History in detail every passage in which he directly or indirectly adverts to religion.

In page 15, when Mr. Fox is considering the general effect produced upon the minds of men by the execution of Charles, he says, "it cannot be doubted but that the opportunity given to Charles for displaying his firmness and piety has created more respect for his memory than it would otherwise have obtained." Does Mr. Fox here accuse Charles of weakness or of insincerity in his religious faith? Does he not grant that the piety of the King, together with his firmness, operated so powerfully upon the minds of men as to counteract the effects which otherwise would have been produced by his imperfections, and what our historian must have believed to be, his crimes?

In page 16 we are told that "whatever might be the advantage gained to the cause of liberty by the terror of the example operating upon the minds of princes, such advantage is far outweighed by the zeal which admiration for virtue, and pity for sufferings, the best passions of the human heart, have excited in favour of the royal cause." Did not the piety of Charles hold a distinguished rank among those virtues which at this very hour increase our pity for his sufferings, and which among all considerate men of all succeeding ages will soften the odium which has fallen upon the royal cause?

When Mr. Fox speaks of the University of Oxford, as passing that famous decree, which "condemned formally, as impious and heretical propositions, every principle upon which the constitution of this or any other free country can maintain itself, and stigmatised such principles as contrary to the holy scriptures, to the decrees of councils, to the writings of the fathers, and the faith and profession of the primitive church;" he adds *, "such is the manner in which churchmen will abuse, when it suits their policy, the

* Page 51.

" holy name of that religion whose first precept is to love " one another, for the purpose of teaching us to hate our " neighbours with more than ordinary rancour." Mr. Fox and I may be mistaken in thinking those principles essentially necessary to the constitution of every free country, and in believing that churchmen, when it suited their policy, have sometimes abused the name of religion. But we are not mistaken, when we call that name holy—when we call the precept, which it gives us to love one another, its first and great moral commandment; or when we think it a violation of that commandment to teach men to " hate their neighbours with more than ordinary " rancour."

In page 57 he considers it " not as a judicious and " honest use, but a perversion of scripture, if men had so " applauded the declaration, which was ready for the " press at the time of Charles the Second's death, as to " pronounce it an additional proof of the maxim

" nunquam libertas gratior extat
" Quam sub rege pio."

What is this, as connected with Mr. Fox's views of Charles's conduct, but in effect to say, that without the perversion of scripture, true liberty and true piety could not be represented, upon scriptural grounds, as likely to receive any solid benefit from the declaration of a prodigal and profligate monarch, who had been neither humbled by adversity nor soothed by prosperity—who was equally ready to promise where he could deceive, and to threaten where he could intimidate—who had shown himself capable of abandoning his love of voluptuous ease, and the shifts of temporising accommodation, when he met with opportunities for the bolder assumption and the sterner exercise of regal power—who had endeavoured by force of arms to give effect to his illegal and insidious proclamation of indulgence in religion, and then, not from virtuous remorse, but abject fear, had broken the seal of the deed with his own hands —who by practising upon popular credulity had brought an odium upon popular principles in order to undermine

and ultimately subvert popular rights—who had deluded and persecuted Protestant Dissenters in England, and bound himself by a solemn pledge to accomplish the downfal of the established church—who in Scotland let loose the fury of Episcopalians against Covenanters, while he kept in reserve a host of Papists who at a proper season were to crush Episcopalians—who had shut up the Exchequer, seized upon charters, violated his engagements with Parliament, and squandered upon minions and mistresses the grants which had been made him for the protection of his subjects—who had spared a Lauderdale, skreened a Danby, disgraced the faithful Clarendon, ruined the patriotic De Witt, sacrificed a Russel, a Sydney, and a Stafford to the rigours of a sentence which he knew to be unjust, betrayed Holland, deserted Spain, and for the basest purposes of foreign and domestic policy sold himself again and again as a groveling, shuffling, intriguing pensioner to the bigoted, arrogant and ambitious Sovereign of France. Congratulations and encomiums even upon such a Prince may be read in addresses from short-sighted academies and low-minded courtiers. But the vindication of *such* a Prince, as Mr. Fox thought, is not to be found in the genuine spirit or letter of the Scriptures. Is it the custom of infidels to bear such testimony to the consistency of those Scriptures with the best rules of government, and their usefulness even in the temporal concerns of mankind? Can it be the duty of Christian teachers to extract their praises of such a man as Charles, or their defence of such a governor, from the hallowed oracles of God? Reasons, I grant, they had for dreading the Puritans whom Charles was known to detest, and the Papists whom he was known to favour. But was there not equal reason to look with some distrust upon a Prince who openly encouraged those unrestrained vices and those undisguised opinions by which every truth of religion and every principle of morality were endangered?

" Quis Dardana ab ortu
" Mænia mutato tantum jam tempore credat?
" Luxus, et insanis nutrita ignavia lustris,
" Consumptusque pudor peccando, unusque relictus

" Divitiis probrosus honor laccrabat hiantem
" Desidia populum, ac resolutam legibus urbem.
" Nec vitiis deerant vires. Madefacta veneno
" Assyrio manibus vestris, medioque dierum
" Regales epulæ, atque ortu convivia solis
" Deprensa, et nulla macula non illita vita.
" Tum populo sævi patres, plebesque senatus
" Invidiâ læta, et collidens dissona corda *."

In page 96 Mr. Fox praises Richard Baxter as a pious and learned man. Who will deny it?

In page 201 he tells us that " the religious concerns " in which Argyle seems to have been very serious and " sincere, engaged much of his thoughts on the day of " execution. But his religion," Mr. Fox adds, " was of " that genuine kind which by representing the performance " of our duties to our neighbour as the most acceptable " service to God, strengthens all the charities of social " life." If the most orthodox man living were to describe and to praise the Christian religion as a rule of life, could he describe it more accurately, or praise it more ardently, than Mr. Fox has done in the words above quoted? Mr. Fox we may allow, was delighted with the political principles and political conduct of Argyle. But let us remember that those principles and that conduct are not exclusively the objects of Mr. Fox's commendation. He praises Argyle for being pious. But he, also, praises Christianity for instructing Argyle in *that* kind of piety which carried him onward from the love of God to the love of his neighbour.

In page 204 we read, " Let him be weighed ever so " scrupulously, and in the nicest scales, he will not be " found, in a single instance, wanting in the charity of a " Christian, the firmness and benevolence of a patriot, " the integrity and fidelity of a man of honour." I believe that in the enumeration of a man's virtues, infidel writers do not tell us, so earnestly as Mr. Fox has told us, that

* Silius Italicus, lib. xi. l. 30.

with the firmness and benevolence of a patriot, and the integrity and fidelity of a man of honour, their hero united the charity of a Christian. Surely Mr. Fox has upon this occasion extolled a Christian virtue in terms strictly Christian.

With evident marks of sympathy and *approbation* Mr. Fox represents Argyle "as desiring Mr. Annand and Mr. "Chartris to pray for him, as praying for himself with "much fervour and devotion, as offering his prayers to "God for the three kingdoms of England, Scotland, and "Ireland, as asking pardon for his own failings both of "God and man, as praying that there never may be want-"ing one of the royal family to support the Protestant re-"ligion, and that if any had swerved from the true faith, "God would turn their hearts." When Argyle a third time addressed the people, and said, "I die not only a Protest-"ant, but with a heart hatred of Popery, prelacy, and "all superstition whatsoever," Mr. Fox does not dissemble his wish that these last expressions "had not been "uttered, as there appears certainly something of violence "in them unsuited to the general tenor of his language," and of that general tenor Mr. Fox seems to have approved, because it was adapted to the situation of a dying man. Thus far Mr. Fox commends the Christian piety of Argyle, as displayed at a moment when it peculiarly became Argyle to be pious; and he condemns only that excess, by which his piety was made inconsistent with Christian charity. When Mr. Fox relates the preparation of Monmouth for execution, he faithfully and solicitously brings forward many circumstances by which the devotion of Monmouth most strongly recommends him to our compassion. "Mon-"mouth," says he, "was very sincere in his religious pro-"fessions, and it is probable that a great portion of this "sad day was passed in devotion and religious discourse "with the two prelates, who had been sent by his Ma-"jesty to assist him in his spiritual concerns." Upon the scaffold, Monmouth, he tells us, "was sure he was going "to everlasting happiness, and considered the serenity of "his mind, in his present circumstances, as a certain earnest

" of the favour of his Creator. He maintained that his pre-
" sent courage was owing to the consciousness that God
" had forgiven him his past transgressions, of all which he
" generally repented with all his soul." Why did Mr. Fox enter into this detail? I perhaps shall be told that he meant to place in a more odious point of view the conduct of those persons who in the prison and upon the scaffold " seem " to have repeatedly teazed him with controversy, and to " have been far more solicitous to make him profess what " they deemed the true creed of the Church of England, " than to soften or console his sorrows, and to help him " to that composure of mind so necessary for his situa-" tion *." So far as *this* was Mr. Fox's meaning, he in my opinion meant well; for, *if* the Bishops had at such a time abstained from controversial subjects—if they had been more anxious " to console the sorrows of Monmouth" than " to make him profess what they deemed the true " creed of the Church of England"—if they had drawn from the scriptures what the scriptures would have afforded them, other more plain and more efficacious topics " to " help him to that composure of mind so necessary for his " situation"—they would have acted more conformably to the spirit of their religion, the holiness of their functions, and the honour of their church. But Mr. Fox meant something more. He meant to do justice to the Christian sincerity and piety of Monmouth. He gives not the slightest hint that the faith or the devotion of Monmouth was the result of weakness or superstition. He describes them as powerful enough to afford Monmouth that consolation which he sought in vain from his spiritual advisers. Even for *their* infirmities he apologises. He allows " their *ge-*
" *neral* uprightness and sincerity as Church of England
" men." He ascribes their conduct, " not to motives of
" servile compliance, but to an intemperate and party zeal
" for the honour of their church." For the excess of that very zeal he finds some excuse " in the general spirit of

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* Page 263.

"the times, in which monarchy was regarded not as a "human, but a divine institution, and passive obedience "and non-resistance were inculcated, not as political max-"ims, but as articles of religion*."

Where a writer speaks thus seriously of the effects which serious things produce upon the human mind, at a season the most serious, is it fair to accuse him of "that "rabid and relentless bigotry," which is sometimes chargeable upon the advocates of infidelity? I challenge any enlightened and consistent Christian to read the foregoing quotations from Mr. Fox's History, and then, with his hand upon his heart, to tell me whether he should have expected to find passages, conceived in such a spirit, and expressed in such terms, from the pen of Mr. Voltaire, Mr. Gibbon, or Mr. Hume?

In order to show that Mr. Fox has neither directly nor *indirectly* attacked religion, whether natural or revealed, and thus to make the defence of his History against the charge of infidelity *compleat*, I shall here examine every passage in which the word *superstition* occurs.

The activity of the Whigs in persecuting the Popish Plot is represented by Mr. Fox as "the grand engine of "their power." "When that failed," says he, "they were "soon overpowered by the united forces of bigotry and "corruption. They were hated by a great part of the na-"tion, not for their crimes, but for their virtues. To be "above corruption is always odious to the corrupt, and "to entertain more enlarged and juster notions of philo-"sophy and government, is often a cause of alarm to the "narrow-minded and superstitious†." From the last sentence, whether considered in the light of a general proposition, or in its particular application to the conduct of the Whigs in the Exclusion Bill, no inference can be fairly drawn to the prejudice of Mr. Fox. If the Whigs had not

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* Page 264. † Page 94

"entertained more enlarged and juster notions of philo-
"sophy and government" than their opponents, the Exclu-
sion Bill would not have been carried; and if those oppo-
nents had not been narrow-minded, and some of them, in
their attachment to the religious opinions of James, even
superstitious, a measure, which at the moment was thought
favourable to the cause of Protestantism, must have failed.
It is not, however, certain that Mr. Fox meant to apply
the word *superstitious* to the *religious* tenets of *any* persons
who resisted the Exclusion Bill. He might intend to speak
only of the effects produced by superstitious veneration, i. e.
a blind and abject veneration, for monarchy, when the
Tories invidiously insisted upon "the confusion, greatly
"exaggerated, in the times of the Commonwealth, and ac-
"cused every lover of law and liberty of designs to re-
"vive the tragical scene which had closed the life of the
"first Charles."

In speaking of the Bill for the preservation of the
King's person, and the solicitude then felt for the Church
of England, Mr. Fox mentions "a special proviso being
"added, 'that the asserting and maintaining by any writ-
"'ing, printing, or any other speaking, the doctrine, dis-
"'cipline, divine worship, or government of the church
"'of England as it is now by law established, against Po-
"'pery or any other different and dissenting opinions, is
"'not intended, and shall not be interpreted or construed
"'to be any offence within the words or meaning of this
"'act*.'" He then remarks that "only such attacks upon
"Popery as were favourable to the doctrine and discipline
"of the Church of England were protected by this pro-
"viso, and consequently that, if there were any real oc-
"casion for such a guard, all Protestant Dissenters, who
"should write or speak against the Roman *superstition*,
"were wholly unprotected by it." Here Mr. Fox does
not, in his own character, charge superstition even on the
Church of Rome. But the Protestant Dissenters, it is well

* Page 148.

known, were equally zealous with the members of the English establishment, in urging that charge, and Mr. Fox merely uses the word which they would themselves have used, without expressing approbation, or disapprobation.

When Sir Patrick Hume was concealed in the family burying place, "the means of sustaining life were brought "to him by his daughter, a girl of fifteen years of age, "whose duty and affection furnished her with courage to "brave the terrors, as well *superstitious* as real, to which "she was necessarily exposed in an intercourse of this na-"ture*." Surely the dread which a young lady of fifteen felt of ghosts, when she was attending her father in the burying place of her family may, in the present state of opinion, be called superstitious, without any imputation upon the faith of those who apply that term to that dread.

Thus far I see not the slightest appearance of levity or profaneness, where the word superstition occurs, in the three first chapters of Mr. Fox's History; and I have quoted every passage largely, for the purpose of showing by the context what was, and what was not the meaning of Mr. Fox, when he employed that word. Among the fragments we read thus: "While the Whigs considered all "religious opinions with a view to politics, the Tories "on the other hand referred all political maxims to re-"ligion. Thus the former, even in their hatred to Po-"pery, did not so much regard the *superstition* or *imputed* "*idolatry*† of that unpopular sect, as its tendency to es-

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* Page 172.

† When Milton inculcated the duty of mutual forbearance among all Christians, who appealed to the Holy Scriptures for the rule of their faith, he excluded from his scheme of ample toleration the Church of Rome alone, "whose idolatry was an "offence to the Christian world." "The exercise of their religion, "so far as it is idolatrous, cannot," he says, "be tolerated, either "in

"tablish arbitrary power in the state: while the latter re-
"vered absolute monarchy as a divine institution, and
"cherished the doctrines of passive obedience and non-
"resistance as articles of religious faith *." Without the smallest hesitation I should say that the tenets of the Tories in making non-resistance an article of religion, were

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"in public or private; not publickly without grievous and in-
"sufferable scandal given to all conscientious beholders: not pri-
"vately without great offence to God, declared against all kinds
"of idolatry." But Milton was merciful enough not to call for corporal punishment, or severe fines, because "such severities "stood not with the clemency of the gospel, and should not be "employed beyond what appertain to the security of the state."

I should be sorry to imitate the example of Bishop Gunning, "who," as Burnett tells us, "by setting himself with great "zeal to clear the Church of Rome from idolatry, made many "suspect him as inclined to go over; though he was far from "it." Instead of vindicating or palliating what I think the errors of any sect or any church, I am disposed to consider the number and the value of the religious truths which they hold in common with the religious community to which I myself have the happiness to belong; and such truths, in the opinion of Hooker, are to be found even among the Roman Catholics. "He "affirmed," as we are told by Dr. Gauden, "the Church of "Rome, though not a pure, sound, and perfect church, yet was "a true one, in which the necessary and fundamental means of "salvation are preserved, but much diseased and obscured by "superstitious superstructure, to the great danger of people's "souls, and detriment and dishonour of the Christian religion "in its holy institutions, morals, and mysteries." I prefer this opinion of Hooker to the violent language of Mr. Travers, who "contended against the Church of Rome as no church of Christ, "but wholly a synagogue of Satan, and the seat of Antichrist." (See Gauden's Life of Hooker, quoted in page 258 of Walton's Lives, edited by Zouch.)

* Page 275.

superstitious: by which I mean, that they were the effect of a blind, abject, excessive reverence for kingly power, a reverence "full," as Johnson says in explaining the word superstitious, "of idle fancies and scruples about religion" as peremptorily and universally forbidding resistance to the worst measures of the worst kings—a reverence, which as Johnson says in his second interpretation, was "scrupulous "beyond need" about censuring those principles and opposing those projects which must have shaken the foundation of our mixed and free government. But Mr. Fox has *not* said so. He *confines* the words superstition and imputed idolatry to the religious notions of Popery, and, even in so doing, he states, not so much his own judgment, as the opinion of the Whigs: and who, let me ask, will deny that the most orthodox Bishops in the reign of James imputed both superstition and idolatry to the Church of Rome? If any objection should be raised upon the absence of the epithet "imputed" before superstition, and the introduction of it before idolatry, I should say, that the Whigs certainly ascribe both to the Papists; but that Mr. Fox used the word imputed, because he might suppose it easier to prove the more *general* charge of superstition, than the *specific* charge of idolatry. He, in all probability, knew little or nothing of the distinction maintained by Papists and opposed by Protestants between Δουλεία and Λατρεία. But he might consider the latter charge as at once more odious and more doubtful, than the former. The magnitude of the charge cannot be doubted when we consider that "no-"thing but the imputation of idolatry, which was thrown "on the Catholic religion, could justify, in the eyes of the "Puritans themselves, the schism made by the Hugonots "and other Protestants, who lived in Popish countries *."

Now in point of fact, Whig ecclesiastics among ourselves have not been less zealous than the Tories in their endeavours to convict the Papists of idolatrous practice. "The approbation," says Burnet, "of the Homilies is not

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* Hume's History, Appendix to the Reign of James I.

" to be stretched so far as to carry in it a special assent " to every particular in that whole volume; but a man " must be persuaded of the main of the doctrine that is " taught in them.

" To instance this in one particular; since there are " so many of the Homilies that charge the Church of Rome " with idolatry, and that from so many different topics, " no man who thinks that church is not guilty of idolatry, " can with a good conscience subscribe this article, that " *the Homilies contain a good and wholesome doctrine, and* " *necessary for these times;* for according to his sense they " contain a false and an uncharitable charge of idolatry " against a church that they think is not guilty of it; and " he will be apt to think that this was done to heighten " the aversion of the nation to it *."

The same accusation occurs repeatedly in the writings of Jortin, Blackburne, &c. and I must own, that to almost every Protestant the adoration paid to images has very strongly the appearance of idolatrous worship. The rubric of our established church, it must be farther owned, explicitly charges idolatry upon the Roman Catholics in the following words: " The sacramental bread and wine " remain still in their very natural substances, and therefore " may not be adored (for that were idolatry, to be abhorred " of all faithful Christians.)" " Now the rubric containing " the foregoing words was added at the end of the Com- " munion Office (says Wheatley) in the second book of " King Edward VI. against the notion of our Lord's cor- " poreal presence in the Holy Sacrament, but was left " out of the rubric when restored by Elizabeth. For it " being the Queen's design to unite the nation in one faith, " it was therefore recommended to the Divines to see that " there should be no definition made against the aforesaid " notion, but that it should remain as a speculative opinion " not determined, in which every one was left to the free-

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* Burnett on Article XXXV.

" dom of his own mind *." After the conference at Hampton Court in the first year of king James I. the abovementioned rubric was restored to the place in which it now stands, and from which I should be happy to see it once more removed. We have a precedent for moderation even to Roman Catholics. Do we not know that in both the books of king Edward the Sixth the last deprecation of the litany ran thus? " From " the tyranny of the Bishop of Rome, and all his detestable " enormities, deliver us." This rough expression was expunged in the reign of Elizabeth, and I have not heard of any proposal for recalling it in later times, even when our establishment was in real danger from the emissaries of the Church of Rome. We now have little to fear from " his " detestable enormities," and the belief of Protestants on the subject of the sacrament stands in no need of protection from invidious accusations of idolatry against the Roman Catholics. The opinion of Protestants upon the elements is stated with sufficient clearness and accuracy in other parts of the church service.

I believe the exclusion of the passage which was restored in the reign of James I. to be such a measure as would not expose Protestants of our own days to the error of paying any superstitious or idolatrous adoration to the sacramental elements; and I am acquainted with very sensible and pious men who think that our churches might be adorned with pictures of scriptural history without any danger to the faith of Protestants from the opinions and example of the Greek Church. Be this as it may, I shall always bear in mind two important circumstances which distinguish the idolatry of the Church of Rome. It does *not*, like the idolatry of the Heathens, exclude the belief and worship of the one true God. It does *not*, like the idolatry of the Jews, introduce another law, which was high treason, nor transfer the obedience of a people from the Deity, *peculiarly their* supreme magistrate, to any other power, which was rebellion †.

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* Wheatley on the Common Prayer, page 26.

† See Warburton's Defence of his Fast Sermon, preached in 1745.

Properties however it has, which seem to me quite unauthorised by scripture, and "I am apt to think" that the term *was* employed by our forefathers "to heighten the aver-"sion" of Protestants to a practice of which I in common with them disapprove. But I should be unwilling to call every Roman Catholic broadly *an idolater*. May he not see greater force, than I do, in the reasons assigned for the practice? and is he not also *bounden* to adhere to that practice, so long as he is sincerely satisfied with those reasons?

Upon this subject I approve the temperate language of Bishop Taylor, even when he is employing what seem to me the most powerful arguments against Transubstantiation. "Their worshipping the elements," says he, "upon the "stock of error and ignorance, I hope will dispose them "to receive a pardon, but yet that also supposes them "criminal; and though I would not, for all the world, be "their *accuser*, or the *aggravater* of their crime, yet I am "not unwilling to be their remembrancer, that themselves "may avoid the danger."

"I will not censure concerning the men that do it, or "consider concerning *the action*, whether it be *formal idol-"atry*, or no. God is their judge and mine; and I beg he "will be pleased to have mercy upon us *all* *."

"If the nation," says Burnett, on Article XXXV. "should come to be quite out of the danger of falling back "into *Popery*, it would not be so necessary to insist upon "many of the subjects of the Homilies, as it was when "they were first prepared." I presume not to point out to my ecclesiastical superiors any of the alterations which it may be "necessary in these times," to make in the Homilies. But I am convinced that throughout Great Britain there is not the smallest danger of a relapse into the errors of Popery. If a Catholic zealot like Père Coton, confessor to Henry the Fourth of France, were to say that "he could do any thing, when he had his God in his hand "and his king at his feet, meaning *him* at confession, and

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* Chapter xiii. Par. 14 of the Treatise on the Real Presence.

" the *other* in effigie of the crucifix or in the host," he will be an object of contempt or pity, rather than of terror. The Sovereign now on the throne and his family are firmly attached to Protestantism, and it is plain enough, not only from recent events, but from other and better causes, that neither the members of the establishment, nor any class of Protestant Dissenters have the *least* inclination to adopt Catholicism. Yet when the most enlightened and determined Protestant looks backs to the controversial questions which were agitated in former times, and which it were useless or dangerous to resume in our own age, he perhaps would vouchsafe to receive some instruction from the judicious and candid observations of Jeremy Taylor: " If it be possible for so great a company of men, of all " sorts and capacities, to believe such impossible things, " and to wonder that others do not eandem Insaniam in- " sanire, *it will concern the wisest man alive* to be inquisi- " tive in the articles of his first persuasion; to be diligent " in his search, modest in his sentences, to prejudge no man, " to reprove the adversaries with meekness, and a spirit " conscious of human weakness and aptness to be abused *."

" There are a sort of men that hate some good things " which the Church of Rome teaches, because she who " teaches so many errors is the publisher and the practicer " of those things. I confess the thing is always unreason- " able; but sometimes it is invincible and innocent, and " then may serve to abate the fury of all such decretory " sentences as condemn all the world but their own dis- " ciples.

" When a prejudice works tacitly, undiscernedly, and " irresistibly of the person so wrought upon, the man is to " be pitied not condemned, though possibly his opinion de- " serves it highly.

" Education is so great and so invincible a prejudice, " that he who masters the inconvenience of it is more to be

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* Epist. Dedicat. to the Treatise on the Real Presence.

" commended than he can be justly blamed that complies " with it.

" You may as well charm a feaver asleep with the " noise of bells, as make any pretence of reason against " that religion which old men have entailed upon their " heirs male so many generations 'till they can prescribe. " And the apostles found this to be most true in the ex- " treamest difficulty they met with, to contest against the " rites of Moses, and the long superstition of the Gentiles, " which they therefore thought fit to be retained, because " they had done so formerly, pergentes non quo eundum " est, sed quo itur, and all the blessings of this life which " God gave them, they had in conjunction with their re- " ligion, and therefore they believed it was for their religion, " and this persuasion was bound fast in them with ribs of " iron, the apostles were forced to loose the whole con- " junction of parts and principles in their understandings, " before they could make them malleable and receptive of " any impresses. But the observation of all wise men can " justifie this truth. All that I shall say to the present " purpose is this: that consideration is to be had to the " weakness of persons when they are prevailed upon by so " innocent a prejudice, and when there cannot be arguments " strong enough to overmaster an habitual perswasion bred " with a man, nourished up with him, that always eat at " his table, and lay in his bosome, he is not easily to be " called Heretic, for if he keeps the foundation of faith, " other articles are not so clearly demonstrated on either " side, but that a man may be innocently abused in the " contrary. And therefore in this case to handle him cha- " ritably is but to do him justice: and when an opinion " *in minoribus articulis* is entertained upon the title and " stock of education, it may be the better permitted " to him, since upon no better stock nor stronger argu- " ments, most men entertain their whole religion, even " Christianity itself*."

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* Section 2 on Liberty of Prophecying.

" Though, in a matter of consequence, so long as the " foundation is entire, every man that errs cannot be sus- " pected justly guilty of a crime to give his error a for- " mality of heresy; for we see many a good man miserably " deceived (as we shall make it appear afterwards) and he " that is the best amongst men, certainly hath so much " humility as to think he may be easily deceived, and twenty " to one but he is in some thing or other; yet, if his evil " be not voluntary, and part of an ill life, then, because " he leads a good life, he is a good man, and therefore no " Heretic *."

Such were the sentiments of a Prelate eminently distinguished for learning and piety, and for attachment, unfeigned and unalterable, to the *established religion of this country*. They carry with them the authority of principles to my mind, because I believe them to breathe the true spirit of Protestantism. Though employed formerly in some instances against zealots in the church of Rome, they may now furnish general rules for assuaging the excess of zeal in other religious communities; and if the persons who adopt and act upon them, should gradually diffuse a spirit of mutual forbearance among their Christian brethren of every denomination, their " labour will not be in vain."

Let it not be supposed that I have the smallest intention to vindicate those doctrines which my Protestant brethren may consider as superstitious or even idolatrous in the adherents of the Church of Rome. But in the present state of public opinion I see more practical harm than practical good in the application of such offensive words as might, in a former and less happy condition of the world, have not been wholly unjustifiable. I am not a stranger to the controversies in which our forefathers were laudably and I think successfully engaged against the Roman Catholics, and from my own conviction upon points of faith peculiarly important to Protestants, I shall ever respectfully and thankfully acknowledge myself indebted to the writ-

* Section 2 on Liberty of Prophecying.

ings of Bishop Hall, Jeremy Taylor, Dr. Barrow, John Hales, Chillingworth, Bishop Warburton and other celebrated divines both English and foreign. Great is the information which their labours will afford to any impartial reader in his closet upon particular points of doctrine. But the well-known example of Chillingworth should put us upon our guard against any general language of contempt or hatred towards persons who generally hold the faith of the Church of Rome, and who in holding it may have the same claim with ourselves to the praise of diligence, learning, sagacity, sincerity, virtue and piety. Wheresoever the truth may lie, the merit of searching for it belongs, I trust, to both parties, and it were scandalous to deny that great abilities have not been employed by Roman Catholics, as well as by Protestants. Difference in opinion will not destroy every sentiment of moderation and respect in those men who understand the practical as well as speculative uses to which as scholars and as Christians they may apply the following words of Jeremy Taylor. "I knew a scholar once who "was a man of quick apprehension and easy to receive an "objection, who when he read the Roman doctors was "very much of their opinion, and as much against them "when he read their adversaries, but kept himself to the "religion of his country, concerning which at all times "he remembered that there were rare arguments, and answers respectively, though he could not then think upon "them *." As to myself, I hope to live and so die in sincere and affectionate communion with the church of England. But I also hope to find a better way of showing myself either worthy to live, or fit to die within the pale of it, than by insulting Roman Catholics with the opprobrious imputations of superstition and idolatry.

I do not mean to involve Mr. Fox in the guilt of that discretion and that moderation, which, I trust, will ever regulate my own conduct towards the Roman Catholics. But I hope not to be unsuccessful in my endeavours to

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* Ductor Dubitantium, book i. chap. 5.

shew, that, in the application of the word superstition—a word which is often employed by infidel writers to throw a kind of *indirect* reproach upon religion, Mr. Fox has not even incidentally furnished his enemies with any pretext for accusing him of latent infidelity.

"Id Cinerem, et Manes credo curare Sepultos*."

As it was the lot of Mr. Fox to act in very eventful times, and to fill for many years a large space in the public eye, his warmest partizans cannot be surprised at great difference of opinion upon what the Reviewer calls, "his "sanguine temperament, and his disposition to run into "extremes." When he stands before the world in the character of an Historian, readers of every party are entitled to form their own judgment upon the literary and political merits even of an unfinished work. But the charge of *infidelity* must be painful, beyond all other reproaches, to the better and the greater part of those who admired his talents, or cultivated his friendship. It is therefore with peculiar anxiety that I have examined the grounds on which this formidable accusation is raised, and I trust that the attempt I have made to refute it, will not be offensive to men of virtue, or unsatisfactory to men of reflection.

Alas! I am sufficiently versed in the history of churches, and the controversies of churchmen to know with certainty, and to lament with sincerity, the "rabid and unrelenting" spirit which frequently, I do not say exclusively, distinguishes the *odium theologicum*. In the very act of defending that religion which forbids us to "judge lest we be "judged," those disputants have been too prone to censure persons, instead of examining things—prone to confound particular opinions with general principles—prone to load their adversaries with invidious consequences, which those adversaries did not foresee, or which, being told of them, they did not admit, or which, admitting them, they would

* Virgil, Æneid 4.

not consider as evidences against *their* views of facts and principles—prone to assign criminal motives as the causes of erroneous tenets—prone to let loose indiscriminate reproaches on the dauntless inquirer and the shameless scorner—prone to infer deistical propensities from heresy real or supposed, and to insinuate that professed deism is employed as a cloke for lurking atheism. Heaven forbid that I, or my friends, or my enemies, should have "so "learned Christ!"

Bigotry may exist without the adjuncts of infidelity or superstition. Possible it is that the Reviewer and myself may not be without some portion of latent bigotry in the attachment we feel to our respective opinions in politics and religion; and well does it become us "so to "try and examine ourselves" that we at the last day may not be numbered among the false "accusers of our breth-"ren." It is proper for me to add, that Mr. Fox imputes bigotry, not superstition, to the English prelates who attended Monmouth, that he imputes neither the one nor the other to the English *church*, and that no passage in Mr. Fox's History, no position in his other publications, nor any principle, statement, or even insinuation in any of his parliamentary speeches will justify any man of common discretion, or common candour, in deliberately charging Mr. Fox with infidelity at all—much less with infidelity aggravated by "morose, illiberal, rabid and relentless "bigotry." The well-meaning zeal of the Reviewer may have made him, *for the moment*, indiscreet and uncandid. But I am persuaded that, upon reconsidering the sentence of which I have been speaking, he will be disposed to retract, or to soften it, as applicable to Mr. Fox.

When Mr. Fox wrote his History he did not foresee that any part of it would give rise to a discussion upon the rubric. But his account of the ecclesiastics who attended Monmouth has induced, we see, some critics to appeal to that rubric for the justification of those ecclesiastics, and has also been made one of the grounds for charging Mr. Fox with bigotry and infidelity. I thought it, therefore,

my duty to controvert that opinion, and to repel that charge, because they were brought forward in a work which is known to have all the advantages of extensive circulation, of episcopal and ministerial patronage, and of well-earned celebrity for vigilance, ardour, and activity in the defence of church and state.

APPENDIX.

APPENDIX.

ADDITIONAL NOTES AND ADDITIONS TO NOTES.

"*Learning*," page 309, line 16.

THE Burial Service was read by Dr. Ireland. But I did not see any other Prebendary of Westminster in the procession, or near the grave, and I have heard that Dr. Vincent, the very learned Dean, was confined by illness. Be this as it may, the admirers of Mr. Fox will remember with satisfaction, that his funeral was attended by the Rev. Dr. Knox, the Rev. Dr. Symmons, the Rev. Dr. Raine, the Rev. Dr. Hughes, Principal of Jesus College, Oxford, and Dr. Davy, the Master of Caius College, Cambridge.

"Præcipua," says Tacitus, "sub Domitiano miseria-"rum pars erat, videre et *aspici*, cum suspiria nostra sub-"scriberentur*." In England, it is true, we live under the protection of wiser laws, and the government of better sovereigns, than the subjects of Domitian; and yet, some Englishmen may be found, who are scared from the expression of their real feelings by the officiousness of whisperers, or the malignity of spies. But the excellent men

* Vit. Agricol.

whose names I have just now mentioned, did not think it inconsistent with their professional or academical characters, to act openly and directly in conformity to their political principles. They knew that Mr. Fox had met with less encouragement than great statesmen usually experience, from the smiles of courtiers, and the favour of princes. But they suffered no consideration of this kind to deter them from paying the last tribute of respect to his memory.

" The baleful dregs
" Of these late ages, this inglorious draught
" Of servitude and folly, have not yet,
" Blest be th' Eternal Ruler of the world,
" Defiled to such a depth of sordid shame
" The native honours of the human soul,
" Nor so effaced the image of its Sire *."

" *Clearest and most accurate view*," page 329, 4 lines from the bottom.

The Athenians with a mixture of gratitude and admiration, were anxious to distinguish by a peculiar name the laws of Solon from those of Draco. They called the former, " νόμους," and the latter, " θεσμούς †." But there cannot be many persons now living who would commend the conduct of Solon in framing laws with studied obscurity, or acquiesce in the reason assigned for it. " λεγέται καὶ " τοὺς νόμους ἀσαφέστερον γράψας, καὶ πολλὰς ἀντιλήψεις " ἔχοντας, αὐξῆσαι τὴν τῶν δικαστηρίων ἰσχύν. Μὴ δυναμέ-

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* Akenside, Pleasures of Imagination, book 2.

† See the authors quoted by Meursius, cap. 13, de vita, legibus, atque scriptis Solonis.

"νους γὰρ ὑπὸ τῶν νόμων διαλυθῆναι περὶ ὧν διεφέροντο συ-
"νέβαινεν ἀεὶ δεῖσθαι δικάστων, καὶ πᾶν ἄγνιν ἀμφισβή-
"τημα πρὸς ἐκείνους, τῶν νόμων τρόπον τινὰ κυριεύοντας*."

Such a measure might in Solon's estimation be suited to Solon's countrymen in Solon's age. But if it were proposed, during the enactment of a statute, in the English Parliament, it would be indignantly rejected; and yet I remember something like an indirect and incidental approbation of the principle, in a speech which about the year 1780 was delivered in the Borough, and in which a sort of insinuation was thrown out, that it might not be wholly inconvenient for the common people to remain ignorant of the legal differences between riot aggravated by plunder, and treason †. The observation, when I read it in the newspapers, seemed to me most unbecoming in an open court of judicature, and to this hour *animus meminisse horret.* But at present, there sits not, I am firmly persuaded, on the English Bench one person who is capable of applying, or uttering, or even harbouring in his mind with the smallest degree of assent, so dangerous a rule for the administration of public justice.

Penal laws ought to be too clear, to be misunderstood by any man of plain common sense and common attention —too strong, to be violated with impunity by the audacious —too precise and definite, to be evaded by the crafty or perverted by the tyrannical; and too just, to be enforced without the prompt and general approbation of society. Who controverts these trite and obvious truths? No one. But have lawgivers never neglected them? Have our forefathers never supposed the Judges of their day to usurp

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* Plutarch. in Vit. Solon, vol. i. page 88, Edit. Sylburg.

† Though Socrates eloquently pleaded the cause of Minos and other departed lawgivers, as the benefactors of mankind, I doubt whether he would have admitted the person to whom I allude, into his catalogue of worthies. (Vid. Plat. in Minoe, vol. ii. p. 319, Edit. Serran.)

indirectly the office of lawgivers, to strangle the ordinary import of words and sentences in tight and intricate swaths of technical maxims, and to draw out from the body of a statute those vital energies, which they wished to see employed in giving strength and activity to all the huge and uncomely limbs of interpretation affixed to it by themselves?—Have cunning villains never baffled the efforts both of Judges and lawgivers, while for the commission of crimes, similar in appearance, but far inferior in malignity, a wretch almost ignorant of his political duty, and quite unskilful in eluding danger, has suffered death?

The Roman law is indebted for much of its precision to the language it adopted from the Stoics who were eminently distinguished by their accuracy in the use of terms. But Mr. Bentham has well observed that, in one instance, even the Roman lawyers utterly abandoned the original sense of *dolus*, which "implies deceit, concealment, clan-"destinity;" and in order to distinguish between *dolus*, and *culpa sine dolo*, applied the former word to "open vio-"lence," accompanied by "intentionality *."

The best *explanation* I have ever seen, (for it was not intended to be a *defence*) of the phrase *dolus malus* is in a most learned work of Heraldus. "Dolus," says he, "et dolus malus multo latius extenditur. Sed in lege Cor-"nelia (de Sicariis et Veneficiis) est πρόνοια, quæ etiam in "foro Attico dicebatur ἐπιβουλὴν, proprie, dolus. Dolus "malus excludebat impetum et casum, quomodo et πρόνοια, "et ideo *homicidium* dolo malo factum dicebatur, quod non "furore factum, impetu, et casu, sed proposito, quod est "πρόνοια. Πρόνοια in criminibus βούλευσιν significat, διά-"νοίαν, ἐπιβουλήν †."

In page 467 I had occasion to notice the objection made by Mr. Penn to another phrase, *malus animus*, as

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* Elements of Jurisprudence, p. 92.

† Animadvers. in Salmasii Observat. ad Jus. Att. et Rom. lib. v. cap. 3.

vague, indistinct, and unfit to regulate the measures of lawgivers in fixing the crime of murder. Mr. Bentham with his usual acuteness thus censures the same expression: "It is not unfrequent to meet with the phrase, *malo animo*, "a phrase still more indeterminate, if possible, than any of "the former." (dolus, dolus malus, culpa sine dolo, culpa lata, levis, levissima, &c.) "It seems to have reference to "intentionality, or to consciousness, or to the motive, or "to the disposition, *or to any two or more of these taken "together;* no body can tell which; these being objects "which seem to have never hitherto been properly distin-"guished and defined *."

"*Justice*," page 425, line 13.

I have employed the word Justice in the sense which it bears, usually in popular discourses, and sometimes in philosophical writings. We distinguish it, in our common apprehensions, from Mercy: and our philanthropy is gratified, when mercy triumphs over what we call justice. But, if mercy were *apparently* to produce what we call injustice, we should disapprove of it. The secret ground of our disapprobation is our sense of that very utility, of which our philanthropy approves, when it is effected by means to which we give the name of justice. Mercy, also, under the circumstances in which alone it ought to operate, may itself be considered as a species of justice in the extended signification which the term sometimes carries with it, both in ancient and modern writers, and both of them, as usually distinguished from each other, but referred to a common principle of utility, fall under the generic name of benevolence. I wish not to disturb the received forms

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* Elements of Jurisprudence, page 92.

of language; and yet I would be understood to admit much truth in the following observations of Mr. Bentham.

They who adopt what he calls the Principles Asceticism and Sympathy exclusively, "set up," he says, "a phantom "of their own, which they call justice, whose dictates "are to *modify*, which, being explained, means to *oppose*, "the dictates of benevolence. But justice, in the only "sense in which it has a meaning, is an imaginary person-"age, feigned for the purpose of discourse; whose dictates "are the dictates of utility applied to certain particular "cases. Justice, then, is nothing more than an imaginary "instrument employed to forward on certain occasions, and "by certain means, the purposes of benevolence. The "dictates of justice are nothing more than a part of the "dictates of benevolence, which, on certain occasions, "are applied to certain subjects, to wit, certain actions*."

"*Odd customs*," page 429, line 20.

In the history of our own country, we read of a strange custom which formerly prevailed at Halifax. "If the "felon were found within the liberty, with goods stolen "out or within the liberty or precincts of the same forest, "either hand-habend, backberand or confessand any com-"modity of the value of thirteen pence halfpenny, he, if "convicted on Saturday, the great market day, was to be "immediately taken to the gibbet, and there to have his "head severed from his body; and, if convicted on any "other day, he was to suffer on the third market day, after "his conviction."

"Nec vero his sine sorte datæ sine Judice sedes.'

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* Elements of Jurisprudence, page 123.

"The felon was to be brought before the Lord's bai-
"liff, who issued out his summons to the constables of
"four towns within the above precincts, to require four
"Frith Burghers from each, to appear on a certain day,
"and examine the charge." But, be it observed, that when they tried and convicted, they were NOT put upon their oath. They performed all the arduous and perilous duties of jurymen, without subjecting themselves at the time to that sanction which supplies the peculiar and most proper *name* for the office. In England, as in Carinthia, this summary sort of justice seems to have suggested some doubts; and, in England, as in Carinthia, a remedy, if it deserves the name, was provided. In Carinthia*, the guilt of the accused person was again examined; and, if it was disproved, he was honoured with the rites of burial. At Halifax, AFTER EVERY EXECUTION, "the Coroners of
"the county, or some part of them, were obliged to repair
"to that town, and there to summon a jury of twelve per-
"sons before them, and sometimes the same persons who had
"condemned the felon, and administer an oath to them, to
"give in a true and perfect verdict, relating to the matter
"of fact, for which the said felon was executed; to the in-
"tent that a record thereof might be made in the crown
"office†."

Our historian has produced a pretty long catalogue of malefactors who suffered under the gibbet law of Halifax. He produces no one instance in which the Coroner, holding a jury, found reason to disapprove of the sentence; and he makes the following remark upon the beneficial effects of the usage: "The bad opinion which our ances-
"tors had of *furtum manifestum* might give rise to the
"Barons' power of punishing it; for nothing surely could
"more effectually deter from the practice than to take off
"the offenders without much trouble or expence to the
"prosecutors, in this *public summary way, without the pos-*

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* V. Supra, p. 429.

† Watson's History of Halifax, page 215.

"*sibility of either pardon or reprieve*, if they were found "guilty*."

Here an enemy to the reform of our Penal Code might insist upon the authority of precedent, upon local convenience as a ground of peculiar severity, upon the absence of any historical testimony to prove the abuse of a law, rigorous indeed, but effectual, and upon all the advantages which speediness and certainty in the execution of a sentence are supposed to bestow upon punishment as intended for example. Yet, for reasons which it is unnecessary to enumerate, I am inclined to believe that few modern legislators would be willing to restore and extend to other places the gibbet law of Halifax, as an *additional* and *more efficacious* security for property in our great manufacturing towns.

The adage which prayed for deliverance from "Hull, "Hell, and Halifax," is founded upon principles which lie deep in human nature, as influenced by fortuitous and external circumstances. A farmer is hostile to the stealing of sheep, cows, and horses; a trader is implacable against forgery, and even sex, as well as condition, points the fears and the anger of mankind against particular crimes. But the laws, while they provide for the security of all subjects, should not perhaps enter into the prejudices and passions of any classes; and in the course of trials well does it become Judges to look with a most watchful eye upon the local, and other accidental considerations by which the minds of jurymen are likely to be affected in their views upon the malignity of actions, and the credibility of evidence. The various crimes which have been committed in a county where I have resided for twenty-three years—the capital punishments which have been inflicted—the harsh spirit by which juries have been more than once actuated, and the fatal mistakes which, after most careful enquiry, I seriously believe to have been made in three cases, without any apparent want of vigilance, or impartiality, or

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* Page 221.

humanity in the court, fill my soul with the deepest sorrow. "The sting of Death is Sin, and the strength of "Sin in the law" of England, is far too great. Let "grace," in conformity to the real import of the scriptural word, abound in the exercise of human power, and as members of society, we shall have less to deplore, in sin against the law, and in death under it.

After my observations upon our Penal Code had been printed off, I heard that a Scotish lawyer, high in station, had moved in the House of Commons for leave to bring in a Bill which should extend the English punishment of child-murder to Scotland.

The precariousness of circumstantial evidence, the difficulties which medical men have repeatedly shewn to exist in ascertaining the causes by which the life of children newly-born is destroyed, the earnest and repeated cautions which they have suggested to our legislature, the salutary and mighty force of natural instinct, the influence of shame and remorse upon the mind of females in consequence of violated duty—these are considerations, which at all times should restrain an English Parliament from precipitation in having recourse to the *summum supplicium*. But in Scotland there are other circumstances which deserve great and peculiar attention; for education in that country has long and happily diffused habits of diligence, sobriety, decorum, and religious seriousness among the lower class of the community. Why, then, do our neighbours in North Britain stand in need of a regulation which even English juries, with all their abhorrence of cruelty to the innocence and helplessness of infancy, and all their attachment to the amiable virtues of domestic life, are rarely eager to enforce?

Have complaints been made in Scotland, not, I mean, by self-appointed and self-applauding societies for the suppression of vice—not by little circles of projectors and sciolists, who meet together in a capital, and chat together upon things done, or by them thought fit to be done, "in Heaven above, or the earth beneath, and in "the waters within the earth"—not by officious and nar-

row-minded magistrates of provincial towns, but by the general voice of a people advancing in civilization, and hitherto undebased by luxury? Is the Bill approved by such men as Mr. Malcolm Laing, or Mr. Jeffery, or Mr. Dugald Stewart, and other distinguished professors who now adorn the Universities of Scotland by their researches in practical ethics, in political œconomy, and the relations and interests of classes and individuals, in private as well as public life? Before Englishmen, who have few or no opportunities for direct observation, *decide* upon so important a subject, is it not proper that the representatives of counties and boroughs in Scotland should be called upon to communicate information to Parliament? Does their opinion agree with that of the learned member who moved for the Bill? Is that opinion founded upon their own immediate and personal enquiries, or upon the tragical tales, and oracular harangues of this or that person belonging to courts of justice? What evidence have they severally or collectively to lay before the Parliament of the United Kingdom for the reality of the *fact* itself, that child-murder *has* lately increased? What is the amount of that increase? What proportion does it bear to the commission of the crime, when the *population* of the country was *less?* What are the probable causes of the evil in the present state of things, if it does exist? What are the moral restraints upon it from improved civilization, and increased means of subsistence? What circumstances of base seduction, or barbarous desertion upon the part of fathers, and of extreme depravity, or extreme ignorance, or extreme penury upon the part of mothers have been observed in particular cases? Is it possible, after the example of America, in other questions of Homicide, to fix gradations of child-murder, and to adapt punishments to the greater or less aggravations of the offence? Is it equitable to inflict the heavier punishment of death upon the same kind and the same degree of testimony, upon which the lighter punishment of expatriation has been hitherto inflicted? Is it, and why is it, very unlikely, that any punishment short of death can be effectual? Is it, and why is it, likely, that death itself will be effectual? Shall a rare and almost solitary example of clemency,

supplied to us by the laws of Scotland be snatched away, so as to be no longer a model for imitation, or a subject for praise, to their English neighbours? In the intercourse of legal exchange shall the inhabitants of Scotland, instead of imparting their lenity for our rigour, be compelled to accept our rigour for their lenity? Shall it be said of the party which solicits, and the party which grants, this unprecedented partnership in severity, that in the same island, and in the same age, though subjects are progressive in the knowledge, governors are retrograde in the practice, of legislation?

μὴ γένοιτο.

A wise man, if compelled to chuse between extremes, will make his choice with reluctance; nor would he venture upon making it before he had carefully and impartially surveyed all circumstances, under all aspects of positive and comparative utility. But there are intelligent, humane and serious persons to whom the severities long exercised against unhappy mothers in one part of the kingdom, and now meditated in another, may, as an alternative, appear on some occasions not much less objectionable than the legalised χυτρισμὸς * of the Athenians, which, after all, does not seem to have been very often practiced †.

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* Contemplating, as I do, with satisfaction, the improved sentiments and habits of Christian countries, I cannot slightly pass over the impunity granted to Infanticide, even among the polished and enlightened Athenians. What Pliny says of the natural world is true in the moral. "Quædam pudenda dictu tanta Auc-"torum asseveratione commendantur, ut præterire fas non sit." (Nat. Hist. lib. xxix. cap. 5.) It were absurd to deny the reality of the practice. But humanity would dispose us to believe that it was not very frequent. It has not fallen in my way to meet with any instances of it in the writings of the Greek orators or Greek historians, and little stress is to be laid on the case of Ion

† Vid. Petit. Leg. Attic. page 220, Edit. Wesseling.

The nobility, and it pains me to add, the clergy of Sweden, as I have stated in page 467, resisted the humane

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Ion in the tragedy of Euripides, and a few other similar stories, which have been taken up by poets. I have to confess farther, that of the law which is said to have permitted the exposure of children at Athens, I have never been able to find the contents, or the origin, or the name of the author. Let us, however, examine the evidence which has come down to us, and the use which has been made of it by scholars.

Turnebus in lib. xxxviii. cap. 38 of his Adversaria, gives no example, but contents himself with noticing the word χυτρισμὸς, and referring to Hesychius. But in lib. ii. tit. 4, of the Commentary on the Leges Atticas, Petit says, "Quemadmodum liberos tollere in patris erat positum potestate, ita etiam necare et exponere, idque, meo judicio, non tam moribus, quam Lege receptum fuit Athenis, non cum hac summi Philosophi exceptione *Polit. Libro VII. cap.* 16. περὶ δὲ ἀποθέσεως καὶ τροφῆς τῶν γιγνομένων, ἔστω νόμος, μηδὲν πεπηρωμένον τρέφειν. Nam non tantum liberorum τοὺς πεπηρωμένους, sed etiam quos libebat sanguinolentos licebat vel necare, vel exponere, quod certe idem est: etenim *Necare*, inquit Paulus *Libro II. Sententiarum* [*Tit. XXIV.* 10.] *videtur non tantum is, qui partum perfocat: sed et is, qui abjicit: et qui alimonia denegat: et is, qui publicis locis misericordiæ causa exponit, quam ipse non habet. l. 4. D. de agnoscendis liberis.*" Petit here gives his own *judgment*, unsupported by the express testimony of any ancient writer, that the laws, as well as usage, sanctioned the practice at Athens. It must, indeed, be presumed that, if the practice prevailed for a long time, there was at least a tacit consent from the laws. But the passage which Petit has quoted from Aristotle proves nothing to Petit's purpose. Aristotle is delivering his own opinions upon an ideal republic, and he says, "let there be a law," without any distinction of place, and without the slightest intimation that such a law was in force at Athens. He adds: "Διὰ δὲ πλῆθος τέκνων, ἐὰν ἡ τάξις

"τῶν

wishes of a Swedish king. But in Englishmen, considered as individuals, there is a sort of hereditary and instinctive

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" τῶν ἐθνῶν (legitur, ἐθῶν) κωλύῃ, μηδὲν ἀποτίθεσθαι τῶν γιγνο-
" μένων, ὡρίσθαι γὰρ δεῖ τῆς τεκνοποιίας τὸ πλῆθος," and if more than the prescribed number be begotten, he states certain circumstances under which " ἐμποιεῖσθαι δεῖ τὴν ἄμβλωσιν." Not a word is said about any law which permitted infanticide at Athens. But to states, where by the law it might not be permitted, he gives directions for limiting the number of children, and points out an expedient most shocking to our sensibility, for preventing inconvenience to parents, when the number was likely to be exceeded. Singular it is, that even the humane Pliny does not seem to differ very widely from Aristotle, for having described a process which " præstabat, ne " mulieres conciperent," he adds, " quam solam ex omni atocio " dixisse fas sit, quoniam aliquarum foecunditas plena liberis tali " veniâ indiget." (Lib. xxix. cap. 4.) The understanding of man pauses on the general principle on which Aristotle justifies the above-mentioned regulation: " τὸ γὰρ ὅσιον* καὶ τὸ μὴ, διωρισμένον
" τῇ αἰσθήσει καὶ τῷ ζῆν ἔσται." The uncivilized Germans were in this respect more entitled to our approbation than the sagacious Athenians. " Numerum liberorum finire, aut quem-
" quam ex agnatis necare, flagitium habetur." (Tacitus de moribus German. page 296, Edit. Lips.)

Petit, then, by his reference to Aristotle, gives us no light upon the Athenian law, and there seems to be little propriety in his explanation of the word *exponere* as applied to the laws and usages of Athens, by the authority of a Roman lawyer who was not writing about them.

Petit thus proceeds: " Hinc *passim* apud Comicos, sive " Graecos, sive Latinos in palliatis fabulis suis, in quibus mores
" Atticos

* Upon ὅσιον, as legally distinguished from ἱερὸν, V. Ammonius, page 104; and Valckenaer's Note, page 184; Taylor's Note on Æschines contra Timarch. vol. ii. page 90. Ed. quarto; and on Demosthenes contra Timocrat. vol. iii. page 445 and 457.

aversion to the destruction of human life in cases where custom has not familiarised our minds to the practice, and

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" Atticos repraesentant, infantum expositiones, ut in Heautonti-
" morumeno Terentii sive Menandri, Actu IV. Scena I." from which he quotes v. 14, and the four following. Here we gain some light upon mere *usage*, for comic writers are faithful witnesses to manners, and the Latin play of Terence was founded upon a Greek play of Menander:

" Ex integra Graeca integram Comoediam
" Hodie sum acturus Heautontimorumenon."

PROLOG.

For the fuller illustration of the practice, we may have recourse to Act iv. Scene 1, of the Hecyra, which, as we are told by Donatus in his preface to the play, was taken from a comedy of Apollodorus. We have an additional testimony in the Prologue to the Casina of Plautus, where the *puella expositiția* is mentioned, and the comedy, we should observe, is founded on the Clerumonoe of Diphilus. (Vid. Prolog.) These, I believe, are all the proofs which the Latin comic writers will furnish in support of the very strong language used by Petit—passim. The aid it derives from the Greek comic writers is yet more scanty—Petit quotes from the Ranæ of Aristophanes,

" ὅτε δὴ πρῶτον μὲν ἀυτὸν γενόμενον
" χειμῶνϑ' ὄντϑ' ἐξέθεσαν ἐν ὀστράκῳ." 1222.

Scholiastes: " ἐπεὶ ἐν χύτραις ἐξετιθεσαν τὰ παιδία, διὸ καὶ
" χυτρίζειν ἔλεγον."

To a person who is enquiring for Athenian *instances*, the verses of Aristophanes, even by Petit's own confession, afford no information. He says, " apud Aristophanem, de Œdipo, non e
" *Thebanorum* instituto, quod plane huic adversabatur:" and for this he quotes a decisive passage in Ælian's Various History, lib. ii. cap. 7. The commendation bestowed upon the Theban law

where personal hopes or fears, political animosities, the supposed interests of commerce, or the contagious pride

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law, which denounced death against him who was known "ἐκθεῖναι "τὸ παιδίον, ἢ, εἰς ἐρημίαν αὐλὸ ῥίψαι," implies, that some other states had not a similar law—But it does not specify any law at Athens which permitted the practice, and Aristophanes might have written, as he has, about Œdipus, though no such law, and even no such practice were known among his own countrymen. The Scholiast, indeed, here and elsewhere, is a competent witness to the *practice*. But it does not furnish any testimony from particular instances, nor upon the age, or directions, or framer of the law. My opinion is, that in the comedies of Aristophanes, there is no *direct and unequivocal evidence* on the subject, though, as explained by the Scholiasts, the foregoing and one or two other passages supply a strong presumption in favour of the fact. I have already stated the testimony which Terence and Plautus may furnish. But in the fragments, either of Philemon or Menander, which have come down to us, in the original, there is no vestige of the practice—let us return to Aristophanes. In the Thesmophor. line 512, we thus read:

"τότ' ἐισέφερε γραῦς ἐν χύτρᾳ τὸ παιδίον."

Here was no intention to expose the child. The old woman is sent out by the mother to buy an infant and impose upon her husband—The nurse brings it in, "ἐν χύτρᾳ," and this was often done, as it was here, when they gave children a sponge with honey to stop their crying—see line 462 of the Acharnensians, to which the Scholiast on the Thesmoph. refers, and upon which the Scholiast ad locum mentions the custom.

In the Vespæ, l. 288, we have the word, ἐγχυτριεῖς, which the Scholiast explains thus: "ἀντὶ τοῦ, φονεύσεις, ἐκ τοῦ παρε-"πουμένου, and after giving other interpretations, he adds, "ἔτι γε μὴν καὶ τὰς μαίας τὰς ἐκτιθέισας ἐν χύτραις τὰ "βρέφη." But the various explanations given in the Scholiast will suit the word for all the various purposes for which children

and jealousy of prepossessions do not operate. I distinguish between actions which may have the effects of cruelty, and

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children were put by nurses ἐν χύτρᾳ, and to expose them was one.

I do not recollect any other part of Aristophanes which can throw the smallest light on the subject: and the silence of a writer who was severe enough in censuring the vices of his countrymen may lead us to suppose that infanticide was not very common. It may not be amiss to remark, that Flor. Christian. in his Note on the foregoing line of the Vespæ, refers to the Minos of Plato for evidence which is not to be found in it. The ἐγχυτρίαι of whom Plato there speaks, were *præficæ* who attended burials, not "obstetrices quæ in ollis infantes exponebant."

Potter in his Greek Antiquities, vol. ii. p. 333, speaks of infanticide, and quotes, as from Posidippus, these two lines:

"Υἱὸν τρέφει τις, κἂν πένης τις ὢν τύχῃ,
"Θυγατέρα δ' ἐκλίθησι κἂν ᾖ πλούσιος."

Here we have direct proof of the practice, though not of the law. What reason Potter had for assigning these verses to Posidippus, I know not. I do not find them in Grotius's excerpta (See pages 812 and 900.) nor in the passages which Athenæus cites from ten comedies of Posidippus.

The Greek lexicographers furnish pretty full evidence. "Ἐγχυτριεῖς, φονεύσεις, μετενήνεκται δὲ ἀπὸ τῶν ἐν ταῖς "χύτραις ἐκτιθεμένων παίδων." (Hesychius.)

"Χυτρισμὸς ἡ τῶν βρεφῶν ἐν ταῖς χύτραις ἔκθεσις." (Hesychius.)

"Ἐγχυτρισμὸς, ἡ τοῦ βρέφους ἔκθεσις, ἐπεὶ ἐν χύτραις "ἐξετίθεντο." (Moeris, p. 138.)

The Note of Pierson contains much valuable matter. But I shall quote the conclusion. "Illud meretur observari, et apud "*Scholiastum* Aristoph. Vesp. 288. et apud *Etymologum* p. "313

a cruel disposition. I charge not any evil motive, or any evil intention, the result of such motive, upon the learned

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" 313. et apud *Suidam* l. c. *καταχυτρίσαι* exponi *βλάψαι*. in " Lexico autem Regio, quod Parisiis evolvit Cl. *Ruhnkenius*, " legi *βάψαι*. Quod mihi quidem non temere videtur damnan- " dum."

If *βάψαι* be admitted as the true reading, we may among the Lacedemonians find a custom, which may induce us to apply the word not to children exposed, but to children preserved: " *ἀδὲ ὕδατι τὰ βρέφη, ἀλλ' οἴνῳ περιέλουον αἱ γυναῖκες, βά-* " *σανόν τινα ποιούμεναι τῆς κράσεως ἀυτῶν.*" Here it may be proper to remark, that we have decisive testimony for the law which tolerated and even enjoined infanticide among the Lacedemonians; and of the reasons which were given for it; and of a power lodged not in parents, but in the elders of tribes:

" *Τὸ δὲ γεννηθὲν ἐκ ἦν κύριος ὁ γεννήσας τρέφειν, ἀλλ'* " *ἔφερε λαβὼν εἰς τόπον τινὰ λέσχην καλούμενον, ἐν ᾧ καθή-* " *μενοι τῶν φυλετῶν οἱ πρεσβύτατοι, καταμαθόντες τὸ παι-* " *δάριον, εἰ μὲν ἐυπαγὲς εἴη καὶ ῥωμαλέον, τρέφειν ἐκέλευον,* " *κλῆρον αὐτῷ τῶν ἐννακισχιλίων προσνείμαντες. εἰ ἀγεννὲς* " *καὶ ἄμορφον, ἀπέπεμπον εἰς τὰς λεγομένας ἀποθέτας,* " *παρὰ Ταύγετον, τὸν βαραθρώδη τόπον, ὡς οὔτε αὐτῷ ζῆν* " *ἄμεινον, οὔτε τῇ πόλει, τὸ μὴ καλῶς εὐθὺς ἐξ ἀρχῆς πρὸς* " *εὐεξίαν καὶ ῥώμην πεφυκός.*" (Plutarch. in Vit. Lycurg. tom. i. p. 49. Ed. Xyl.)

In the course of my reading I have met with no testimony so clear, or so full, upon the Athenian law, as we here have for the Lacedemonian. I have no doubt, however, that a law tolerating the practice existed at Athens, and yet I am disposed to think, that the natural affection of parents did not often suffer them to expose their children. Our ignorance of the law is thus far inconvenient, as we know not whether it was left to the arbitrary will

mover of the Bill. But I trust that such men as Sir Vickary Gibbs, Sir Thomas Plomer, Sir Arthur Pigott, and Sir

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will of *every* parent in every situation to expose his children, or whether particular conditions, such as the bodily imperfection of the offspring, or the extreme poverty of the parent, which Aristotle mentions in his ideal Republic, were laid down by the lawgiver, and punishment in all other cases inflicted upon the father or mother.

In Philo Judæus de Leg. Special. there is a passage which does not, indeed, directly point to the Athenians, but which gives us reason, like the commendation bestowed by Tacitus upon the Germans, and by Ælian upon the Thebans, to suppose that other states of antiquity, as well as the Athenian, tolerated infanticide.

"Διὰ τάυτης, τῆς προστάξεως, καὶ ἕτερόν τι μεῖζον ἀπηγόρευλαι, βρεφῶν ἔκθεσις, ὃ παρὰ πολλοῖς τῶν ἄλλων ἐθνῶν "ἕνεκα τῆς φυσικῆς ἀπανθρωπίας, χειροηθὲς ἀσέβημα γέγονε." Vol. ii. page 318, Edit. Mangey, whose Note runs thus: "De "infantum expositione Moses nihil præcepit, ideo forsan, quoniam "sequiorum temporum luxuries barbariam istam Gentibus etiam "humanioribus invexit atqui consuetudo immanis Judæis omni "tempore invisa." He then quotes a pertinent passage from Josephus contra Apion. lib. ii. cap. 24.

Philo was, I doubt not, right in saying, that many nations adopted the custom. He justly rejects the plea of *mercy*, and yet it deserves to be noticed, that he did not particularise either the Athenians or the Lacedemonians.

As it is my wish to state the evidence we have upon this subject more fully and more precisely than I have seen it done by other writers, I must not wholly omit some lines in the verses commonly, but erroneously, ascribed to Phocylides.

"νηπιάχοις ἀπαλοῖς μὴ μάρψῃ χεῖρα δικαίως.

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"Μηδὲ

Samuel Romilly, will pause—will enquire—will reflect, before they lend the aid of their talents, and the sanction

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" Μηδὲ γυνὴ φθείρῃ βρέφος ἔμβρυον, ἔνδοθι γαστρὸς,
" μηδὲ τεκοῦσα κυσὶ ῥίψῃ, καὶ γυψὶν ἕλωρα."

These lines point to no particular state or law. But they prove too clearly the existence of a practice at which nature shudders, and which compels us to reflect upon the serious and humane observation of Plutarch:

" ἄκρατον ἐν τοῖς θηρίοις ἡ φύσις καὶ ἀμιγὲς καὶ ἀπ-
" λοῦν φυλάττει τὸ ἴδιον· ἐν δὲ ἀνθρώποις ὑπὸ τῆ λόγου
" καὶ τῆς συνηθείας (ὃ τοὔλαιον ὑπὸ τῶν μυρεψῶν πέπονθε)
" πρὸς πολλὰ μιγνυμένη δόγματα καὶ κρίσεις ἐπιθέτους, ποι-
" κίλη γέγονε καὶ ἰδία, τὸ δὲ οἰκεῖον ἀ τετήρηκε." (Plutarch. de Amore Prolis. Wyttenbach's edition, tom. II. par. ii. p. 1006.)

The civilized inhabitants of Europe will look back with just disapprobation, upon the opinions and customs of antiquity, and the imbecility or folly of their laws in the toleration of infanticide. But as I have been chiefly speaking of the Athenians, it may be right to suggest, that the practice of exposing children is a far more unquestionable fact than the entire and arbitrary right which fathers and mothers have by some moderns been supposed to exercise over the lives of their children. The fullest account I have seen is in lib. i. cap. 2. of Meursii Themis Attic.

" Ac prima quidem lex Triptolemi, uti dixi, honorandos
" esse parentes statuebat: quod ut cogerentur facere, metu pœnæ,
" qui naturæ pravitate detrectabant, jus parentibus in liberos vitæ
" et necis Solon dedit. Sextus Empiricus, Pyrrh. Hypotyp. lib.
" iii. cap. 24. Καὶ ὁ Σόλων Ἀθηναῖος τῶν περὶ τῶν ἀκρίτων
" νόμον ἔθετο, καθ' ὃν φονεύειν ἑκάτῳ τὸν ἑαυτῆ παῖδα ἐπέ-
" τρεψε. *Quin etiam Solon Atheniensis legem de indemnatis*
" *posuit, per quam unicuique filium suum interficere permisit.*
" Hermogenes, De Invent. lib. i. cap. 1. Ἐνώπιόν τις τῆς μη-
" τρὸς ἀπέκτεινε τὸν υἱὸν, κατὰ τὸν τῶν ἀκρίτων νόμον.
" *Occidit*

of their votes, to a Bill which *may* rest, I do not say, upon the prepossessions or the humour of any single man, but

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" *Occidit quis filium coram matre, juxta legem de indemnatis.* " Curius Fortunatianus, Rhet. lib. i. *Lege quemadmodum sit* " *absoluta qualitas? Indemnatos liberos liceat occidere. Tres* " *filios lege indemnatorum occidit: reus est uxori maletrac-* " *tationis. Hic enim se dicit lege fecisse.* Ac de matre quo- " que, est locus Sopatri, in Divis. Quæst. Ἐξεῖναι καὶ μητρά- " σιν ἀκρίτους ἀναιρεῖν τοὺς παῖδας. *Licere etiam matribus* " *liberos indemnatos occidere.*"

In chapter twenty-two of his book de Solonis Vita, legibus, atque scriptis, Meursius himself opposes the authority of Dionysius Halicarnasseus to that of Sextus Empiricus. Dionysius in the second book of his Roman Antiquities tells us, that according to the laws of Solon, Pittacus, and Charondas, the Greek fathers were " allowed " to drive their children from their houses, and to disinherit them, " περαιτέρω δὲ οὐδέν." His testimony is important, and we must observe that according to it, even these severities were granted by the laws to parents towards disobedient children *only* " τι- " μωρίας κατὰ τῶν παίδων, ἐὰν ἀπειθῶσι τοῖς πατράσιν, οὐ " ϑαρείας." (Dionys. Hal. Rom. Antiq. lib. 2. Edit. Sylburg.)

These cases are perfectly distinct from the custom of exposing children, and it must be observed, that Dionysius does not mention either the infanticide practiced by the Athenians, or the law which permitted it. The passage in Sextus Empiricus is so obscure, that we cannot determine whether he meant to speak of Solon's law as authorizing parents to expose new-born children, or to kill disobedient children of any age. He does not employ the usual word, ἐκλιθέναι, but φονεύειν, and therefore I suspect, that he spoke of children punished, not children exposed by their parents, and even in this I believe him to have been mistaken.

My chief view is to state what has been recorded of the Athenians.

in part, I do fear, upon the vulgar, unequal, vindictive principle of demanding with too little discrimination, blood for blood.

Athenians. I am unwilling to suppose that the frequency of Infanticide among them so familiarised the human mind to it as to occasion the dearth of particular instances which I have noticed in Greek writers, and which is not found upon *other* customs, less important in our estimation. But the practice, I am sorry to say, prevailed in other Greek states; and, as it should seem, was not prohibited in them by the laws. The scene of action, as appears from the Prologus, and various passages, in the Cistellaria of Plautus, was Sicyon. A merchant from Lemnos was the father of Silenium, he was not personally known to Phanostrata the mother, and, in consequence of his sudden, secret, and illicit amour, he fled back from Sicyon to his own country. After the death of his first wife he returns to Sicyon, and, when he pays his addresses to Phanostrata, for the purpose of marrying her,

" Et eam cognoscit esse, quam compresserat;"

she unreservedly tells him

" ejus ex injuria
" Peperisse se gnatam, atque eam se servo illico
" Dedisse exponendam."

Though the Roman laws encouraged by rewards the fathers of many children, the custom of exposing their new-born offspring seems to have been of great antiquity, and long continuance. It is alluded to by Juvenal, Sat. VI. v. 601, 2; and I have met with no express interdict against it, before the time of Valens.

When Nero had killed his mother, his subjects among other indignities, " παιδίον ἐς τὴν ἀγορὰν ῥίψαντες προσέδησαν ἀν-
" τῷ πινάκιον, λέγον, Οὐκ ἀναιρεῦμαί σε, ἵνα μὴ τὴν μη-
" τέρα ἀποσφάξῃς." (Dio Cassius, lib. lxi. par. 16.)

Reimar's

The political motives either of superabundant population, or of incapacity in parents to provide for a large family of children, can have little or no place in the mind of an English legislator, because our population is *not* superabundant, because we have other resources, as in colonization, &c. if it were so, and because the personal incapacity of parents to support at least the existence of their children, is not without remedy from regulations which the laws have wisely and humanely established. But in the moral sentiments of mankind that legislator might find some directions which it were unsafe for him entirely to disregard, if he would avoid that "weakness which a portion of superfluous pain is apt to introduce into the law, or if he "sets a due value upon the efficacy which the law acquires, when the people are satisfied with it, and voluntarily lend their assistance in the execution of it*." Now there are offences against which our indignation bursts out instantaneously, and of which our sober reason seldom admits any palliation. But the pity which is often excited in cases of infanticide carries with it a strong presumption that in our judgment and our feelings we *secretly* recognize the force of that temptation which can overcome the in-

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Reimar's Note on the foregoing passage runs thus: "Morem infantes exponendi, antiquitus usitatum, *diserta* lege primum sustulerunt Valens et Gratianus l. 2. Cod. de infantibus exponendis lib. VIII. Tit. 52. vide Cl. Noodt in Jul. Paul. c. 6."

The Latin writers have recorded several instances, "Quo die Caligula defunctus est, partus conjugum expositi." (Sueton. in Vit. Cal. parag 7.) "Caius Melissus ob discordiam parentum expositus." (Sueton. de illust. Grammatic. parag. 21.) Marcus Antonius Gnipho, who, probably, wrote the four books Rhetoric. ad C. Herennium, prefixed to Cicero's Works, and commonly ascribed to C. Cornificius, was, "in Gallia Natus, sed "expositus." (Ibid. parag. 7.)

* Bentham, page 196.

stinct implanted by nature in the mind of a mother—a force so powerful, that when neither any of the social motives, nor the dread of detection and punishment, have been able to prevail over it, we often infer the absence of that "depraved disposition" which we justly impute to offenders, "when the mischief of an act is very great, and "the temptation to it is very little*."

In regard to the crime of which I am speaking, we have in this country many "tutelary motives" as they are called by Mr. Bentham, all consistent, and all co-operating with those which arise from the sanctions of the laws. In a state where the intercourse of individuals with each other is so near and so frequent, sympathy upon such an occasion is a very powerful, and united with other causes which I am going to mention, is not a very *irregular* motive. Usage and religion are among those tutelary motives to which Mr. Bentham would assign a place in "the ca-"talogue of standing tutelary motives;" and religion more especially, when acting together with benevolence, will act in an uniform manner, and "oppose the commission of "a crime on account of its mischievousness†." When therefore sympathy, usage, and religion come in aid of natural affection, surely the legislator when he fixes the quantity of punishment may take into his calculation the force of the other tutelary motives just now enumerated, and consider well whether it be such as may warrant him in subducting from his penalties any, even the smallest, portion of that rigour which in the absence of those motives it would be necessary, and therefore just for him to employ. "But the force of those other powers," we may be told, "is never determinate enough to be depended upon in cases "where the force of the moral sanction has not been "expressly introduced into and modified by the political. "That force never can be introduced like political pun-"ishment into exact lots, nor meted out in number, quan-

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* Bentham, p. 146. † Ibid. p. 142.

" tity and value. The legislator therefore is obliged to pro-
" vide the full complement of punishment, as if he were
" sure of not receiving any assistance whatever from any
" of those quarters. If he does, so much the better. But
" lest he should not, it is necessary he should at all events
" make that provision which depends upon himself *."

I admit the premises, that the force of those " powers " cannot be meted out in number, quantity, and value," with such exactness as shall *perfectly* suit all conceivable cases. But I think the conclusion drawn from these premises *rather* too wide, when it is said that the legislator is *obliged* to provide the *full* complement of punishment as if he were *sure* of not receiving *any* assistance *whatever* from *any* of those quarters. " Truth," we are told " is pro-
" ductive of utility, and observing truth is acting as things
" really are, and he who acts as things really are must
" gain his end, all disappointment proceeding from acting
" as things are not †."

Is it then true, that the tutelary motives which I have mentioned have severally or jointly a great or even a slight force in preventing infanticide? Is it not the duty of the legislator to examine what is the probable quantity of that force, and what upon the whole may be the probability of its operation? If the force be little, or the probability be little, then I should grant that the legislator *is* obliged to act as if he *were* sure of receiving no assistance from those quarters. But if the probability be great, as in this case I contend it *is*, and if the force also be great, the circumstance of irregularity is not of itself so strong as to render it necessary for him to depend *wholly* on that provision which is made by himself. True, however it is, that in assigning the portion of punishment he is to look to the force of a temptation which overrules both the tutelary motives mentioned by me, and those which are furnished by the

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* Bentham, p. 183. † Warburton's Alliance, book ii. chap. 2.

laws; and true it also is, that where all these motives are overcome, an offence will sometimes appear to have increased malignity. Still, there often is not in the crime of infanticide *such* a malignity as indicates depravity of disposition; and therefore the legislator will be upon his guard against the introduction of such punishment as ought to be employed in restraining such depravity. The mischievousness of single acts is the same, whether the agent be, or be not, generally depraved in disposition. But the chance of *frequency* is lessened, where that disposition does not exist, and I think that of such a circumstance a legislator ought never to lose sight. Keeping it in view, he will be induced by it, not indeed, to abstain from punishment, but to assign such a measure of it as under *all* circumstances shall be *necessary* for the prevention of the crime—while he avoids such punishment as "is conclusively indicative of a habit, "he will increase it in point of magnitude so far as it may "fall short in point of certainty and proximity; and even "where in point of quality it is particularly well calculated "to answer its intention, and *cannot* exist in less than a "certain quantity, he will farther stretch it a little beyond "that quantity which on other accounts would be *strictly* "necessary *."

My opinion, however, is, that for the crime of infanticide punishment for the first offence, especially if accompanied by circumstantial extenuations, *may* exist in a quantity *less* than death; and in the practice and regulations of foreign states, there is some encouragement for us, if not to make the experiment in our own, yet to be cautious, at least, in suffering the *contrary* experiment to be introduced in another country, where it has hitherto been unknown.

The legislator, who undertakes to propose statutes, and especially such as are to affect the life of man, would do well to form those habits of observation, which may

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* Bentham, p. 181.

give him not, perhaps, the splendid name, but the solid knowledge of a philosopher, to explore all those properties of the human mind, " which" as Butler says, " are mere " questions of fact, or natural history, not proveable immedi- " ately by reason, but by appeals to the external senses, " or inward perfections," to survey the " whole complex " constitution of human nature," to examine both the absolute and relative qualities, and the separate and conjoint operations of our appetites, affections and passions, to discover in *them* the *causes*, while in *other* quarters he looks to the *consequences*, of human action, to balance with the utmost wariness and utmost impartiality the force of every impelling and every restraining motive, and by the general result of such investigations to measure the chance of success in any particular application of capital, and, in truth, *every* severe punishment—If, indeed, the tutelary motives, which Mr. B. himself has enumerated, had *no* existence at all, or what, in the view of the legislator, is equivalent, if their power, *though irregular*, were not very frequent, nor very salutary, every penal code ought to be sanguinary, like the system of Draco, or, it should rather be said, that with such a frame of the human mind, and in such a state of things as would be the effect of it, no appeal could be made by a lawgiver to moral approbation: no precise notions of the right to command, or the duty to obey, would prevail: no principles of justice would be embodied in the forms of law: no distinct traces of civil government would be discerned: no physical force could be regularly employed for the protection of the weak and controul upon the strong, nor, indeed, employed at all, but according to the resources and for the purposes of savage revenge, when resisting savage aggression. It is, I grant, a matter of fact, that such motives operate irregularly, and according to my own observation upon mankind it is, also, a matter of fact that under certain circumstances they will afford some degree of aid to the legislator. Instead, therefore, of assuming broadly and without any qualification, that he *must do without* them, and depend *wholly* upon himself, it is proper for him to consider *what* those circum-

stances are, under which he can do *better with* them. A penal statute recommended even by such an enlightened person, must like all other political regulations, be in the first instance experimental, guided, indeed, by analogies more or less applicable from past experience, but supported only by probabilities, which more or less approach certainty, without the possibility of reaching it.

Infanticide is a most mischievous act. It calls for very powerful restraints from laws. It is practically to a great and happy extent restrained by the tutelary motives of which I have been speaking, and when those motives have been inefficacious, the lawgiver may, I think, consistently with the principle of utility distribute the action, which now bears a general name, into different classes, as other criminal actions called by a common name *have* been distributed, and in fixing the penalties he may assign what to him shall appear a just value, to repetition, or any other circumstance of aggravation upon one side, and upon the other side, to anguish of soul from perfidious desertion, to exquisite sensibility to shame, or any other circumstance of extenuation. In child-murder, though extenuating circumstances, alas! are rarely made a ground for mercy from the prerogative of the Sovereign, they often find their way to the compassion of jurymen, and produce impunity as the only alternative they can employ for death. I love that compassion. But I lament that impunity. I wish to make every possible provision against uncertainty in the administration of the laws, by the increased appearance of equity in punishments. I believe, that by a *very* enlightened and *very* attentive legislature, circumstances which extenuate, and circumstances which aggravate guilt, might in many cases be calculated with precision, greater than they hitherto have been, and quite sufficient for all the best purposes of legislation.

If the frequency of a crime be often admitted as a justification of increased severity, may not the rarity of it, when compared with the tendency of opportunities, or the force of temptations to produce it, with the struggle of moral motives to prevent it, and with the number or causes

of other offences, be sometimes considered as a reason for mitigation of punishment? especially where, as I have observed of infanticide, a solitary action in very few instances leads us to infer any radical wickedness of heart in the agent.

"Illam ego non tulerim, quæ computat, et scelus ingens
"Sana facit *."

But this deliberate and most execrable cruelty in a mother to her offspring, widely differs from the motives which actuate the generality of those unfortunate females whom the English law puts to death for infanticide.

Reflecting upon the argumentative and unanswered, but unavailing speech of Mr. Adam upon the power vested in the courts of Scotish judicature: on the sentence of transportation which was passed and executed upon some state criminals at the close of the last century, and on the resistance which in certain quarters has been since made to the farther introduction of juries into Scotland, I did not feel much surprise at one part of the information which lately reached me. But has not society witnessed already too many proofs of an observation which nothing but my conviction of its truth and importance could have induced me to communicate—too many instances, where professional men have been more impelled to act from personal temperament, not very favourably affected by personal experience, than from large and exact views of human nature—where they appear to have been more skilful in the capricious distinctions and arbitrary assumptions of jurisprudence, than in the profound investigations and simple results of moral science—where they have been more accustomed to provide against local and temporary, than permanent and national evils—more inclined to propose measures of rigour, than lenity—more qualified to direct a jury by the authority of fixed rules, than to guide a legislative body by the light of general principles? Yet my anxious hope is, that the Bill

* Juvenal. Sat. 6.

of which I am speaking will not be passed by an English Parliament in the nineteenth century, without clear and numerous proofs of the most unequivocal and most urgent NECESSITY.

Before I quit the painful but interesting subject of our Penal Code, I think it my duty to remark that in the appointment of Judges, something more than ordinary attention seems within these last five or six years to have been shewn to professional knowledge in the persons promoted, to solid judgment, to integrity, and to humanity, without any recommendation from party compliances, or any aid from family connections. Great, too, is the satisfaction I feel in the opportunity I now have for stating, that on several of our late circuits some of our venerable ministers of justice are said to have sympathized with the general and growing sense of their countrymen on the side of clemency, and to have left fewer condemned criminals, than was formerly the case, for execution. This occasional interposition of mercy indicates a progressive but favourable change in quarters where change was much to be desired, and is much to be commended. It constitutes an experimental proof, that in order to answer their best ends in society, and to acquire their proper authority over the minds of men, the laws, may be revised, and the penalties now inflicted by them in many respects mitigated. It will leave room for grave and full deliberation upon a Penal Code to be completely amended; aad as to the alledged inconveniences of a total repeal, they may be easily remedied by an express declaration that the old laws should remain in force for six, or at the utmost twelve months, after the enactment of the new.

He that should have the magnanimity to propose such a repeal, would not, I hope, be discouraged by the menacing and invidious allusions which on some discussions about the Test Act, a deceased Prelate once made to the practice of putting a halter round the neck of the man who should propose a new law, and keeping it there, that he might escape or perish according to the issue of the

deliberation *. In the last mentioned place it may be worth while to remark, Stobæus ascribes to Zaleucus the same regulations which Diodorus Siculus † assigns to Charondas; and Wesseling in a Note ‡ supposes with some probability that on this, as well as other occasions, Diodorus had met with a corrupted manuscript in which he found the name of Charondas erroneously substituted for that of Zaleucus.

The same legislator, whether Zaleucus or Charondas, seems to have acted nearly upon the same general principles which Beccaria held, on the inflexibility of laws yet unrepealed, and on the mischiefs which arise from the subtle and licentious interpretations of private persons. And it must be owned that in some cases Judges by their proneness to employ such interpretations, virtually assume the office of legislators, defeat the original intentions of those who enact statutes, and give rise to error and perplexity in the minds of those who are required to obey them. The whole passage in Dionys. Halicarnass. deserves to be quoted, and it runs thus:

"Προσέταξεν ἐκ πάντ@ τρόπου πείθεσθαι τῷ νόμῳ κἂν ἢ "παντελῶς, κακῶς γεγραμμέν@. Διορθὲν δὲ συνεχώρησε "τὸν χρέιαν ἔχονλα διορθώσεως. Τὸ μὲν γὰρ ἠπᾶσθαι ὑπὸ "νομοθέτου καλὸν εἶναι ὑπελάμβανε· τὸ δὲ ὑπὸ ἰδιώτου παν- "τελῶς ἄτοπον, καὶ ἐι ἐπὶ τῷ συμφέρονλι γίνεται. Καὶ "μάλιστα τὲ τοιούτου τρόπου τοὺς ἐν τοῖς δικαστηριόις τῶν "παρανενομηκόλων προφάσεις καὶ διανοίας ἀντὶ τῶν ῥητῶν "ἐισάγονλας ἐκώλυσε ταῖς ἰδιάις εὑρεσιλογιάις καταλύειν τὴν "τῶν νόμων ὑπεροχήν §."

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* Vid. Stobæum, Serm. 42 and 37. Edit. Reimar. † Lib. xii. parag. 17. ‡ Vol. i. page 489.

§ It may be worth while to add, that, in the next paragraph, we have the well-known story of the unfortunate offender, who, having lost his only eye, as a punishment for destroying one eye of a man who had two, stood with an halter about his neck, and pleaded successfully for the repeal of the Lex Talionis.

I have great pleasure in concluding what I have written on a very important subject, with the statement of a fact which cannot fail to be interesting to those who are adverse to the frequency of capital punishments. My very ingenious and benevolent friend, Mr. Basil Montague, has sent to the press a large collection of the opinions which many distinguished writers upon the Penal Codes of England and other countries have delivered in the defence and recommendation of other punishments, as substituted for death. If some specimens with which he has lately favoured me, had come into my hands before my own remarks had gone to my Printer, I should have derived from them much valuable information, and especially upon the successful endeavours of Mr. Bentham to furnish a better scale than we have hitherto had, for measuring guilt, and apportioning punishment. Basil Montague, I am told, has been much commended by professional men for his publications upon subjects connected with the studies and duties of his profession. I esteem him very highly for his literary attainments, and his personal virtues. Gladly, too, would any advocate for the reform of our Penal Code acknowledge such a man as a *συνεργὸν τῶν κόπου τῆς αγαπῆς*.

" *Speediness*," page 468, line 15.

In the Treatise de Specialibus Legibus, Philo says that the law forbad murderers by poison to live " a day or an " hour after their sentence"—The secrecy of the deed, the number of persons whom it may affect when they are taking their food, and the possibility of committing it between condemnation and death, are the reasons which Philo gives for the speediness of punishment*. I think

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* Vol. ii. pp. 315, 316, Edit. Mangey.

that the crime of poisoning, when it has been clearly proved, ought to be punished with some circumstance, which should mark the horrid nature of the act, though I should be sorry to see any re-enactment of the statute which passed in the reign of Henry VIII. and ordained that the "offender "should be boiled to death in hot water;" which actually was carried into execution against Margaret Davy and some other persons, but on account of its severity was repealed by 1 Edw. VI. chap. 12, and 1 Mar. chap. 1 *. I have great doubts, whether speediness be the most proper expedient for marking the crime even of poison; and it is to be observed that the English laws appoint speedy execution for every sort of murder. The law in this respect is not of a very ancient date, and when I consider the frequency of those cases in which sentence of death is passed upon merely circumstantial evidence against persons accused of murder, I think that speediness ought not to be indiscriminately employed.

"*Abstaining from blood,*" page 470, line 13.

I believe the precept here given for abstaining from blood, to have been obligatory only in the Patriarchal ages. A similar injunction was, indeed, afterwards laid upon the Jews. We should remember, however, that not only a similar, but an additional, reason is assigned for it.

"Levit. xvii. 11. "The life of the flesh is in the blood, "and I have given it to you upon the altar, to make an "attonement for your souls; for it is the blood that "maketh an attonement for the soul. Therefore I said "unto the Children of Israel, No soul of you shall eat "blood, &c.

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* See Dagge, vol. ii. p. 74.

" Here appears the reason of this strict and often re-
" peated prohibition: blood was appointed as the attone-
" ment for sin, it was set apart and sanctified for that pur-
" pose; and consequently, when the use of the altar, and
" sacrifices ceased, at the death of Christ, the prohibition
" of eating blood should cease also, and the precept con-
" cerning it in the Acts of the Apostles seems to have been
" prudential and temporary *."

" *Most indelible*," page 471, line 18.

To decree and to inflict death are expedients too well adapted to the indolence of the high and the low, the virtuous and the vicious: and though indolence, whether it be indulged in the enactment or the administration of laws, produces all the evils of insensibility and injustice, pride, as I have elsewhere remarked, comes in to its aid, and begets a stubborn reluctance in men to reform, and even reconsider established systems of adjudication. But it is the duty of legislators and magistrates to shrink from *no* toil of deliberation or exertion, which, in the event, may spare human life, while it discourages wickedness in individuals, and diminishes mischief to the community. What, say the enemies of amendment in our laws, with an air of defiance, what are we to do, when we are surrounded by so many crimes, and so many dangers arising from them? To this general question, which may always be urged by the prejudiced, and will always be assented to as a ground for rigour by the thoughtless, I should answer, examine carefully the results of what you and your forefathers have done. Consider the

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* Jortin's Remarks on Ecclesiastical History, vol. i. p. 215.

power which yourselves have of doing otherwise, with greater probability of greater success. Collect from those results and from that power, what you ought to do in future, and you will discern what you ought *not* to persist in doing, because you have already done it often, earnestly, and with little or no assignable portion of good effect.

After much deliberation, my Friend, and many scruples, I have determined to communicate to you my thoughts on a very important topic. The sense I have of that importance to the cause of virtue, to the efficacy of laws, and to the well-being of society, will, I hope, justify me in not yielding to, perhaps, a superfluous, false, and mistimed delicacy. But if precedents be farther necessary for my justification, I can find them in Beccaria, in Mr. Bradford, and in other writers, who blended the principles of ethics with the regulations of jurisprudence; and whose tenets in both are pure, yet without austerity, and philanthropic, but without ostentation. To the poignant sorrow of every good, and even with the invincible disapprobation of almost every bad man, there is *μιαρόν τι καὶ ἄῤῥητον ϭδέλυγμα* * against which I, in common with many serious and intelligent observers, am convinced that death is an unappropriate, and, being at once indiscriminately rigorous, and scantily remedial, is, therefore, an improper, and, it may be, excessive penalty. If merely the immoral and irreligious properties of that offence were started for discussion, I should turn away with disgust from the subject, and, in the solemn and dignified language of an ancient writer I should say, "Ego *Anglici* pudoris more contentus ve-

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* "ὃ πρότερον καὶ λεχθῆναι μέγα ονείδος ἦν." (Philo de Special. Leg. vol. ii. p. 306, Edit. Mangey.)

There was a people among whom the principle of silence is said to have been extended to other crimes:

"Πέρσαις ὃ μὴ ϖοιεῖν ἔξεστιν, ὐνδὲ λέγουσι." (Stobæus, Sermo. 42.)

"recundiam silentio vindicabo*." My present concern, however, is not like that of Quintilian, with the verbal indecorums, or the logical subtleties of philosophical theorists; but with the practical measures of legislators providing, or, at least, professing to provide, for the purity of our national character. My wish is to discover, whether the laws, which ought always to recognise, and, so far as may be possible, to cherish† our clearest, most general, and therefore *natural* apprehensions of right and wrong, may not be rendered apparently more proportionate than they now are, to the loathsome and pernicious properties of a certain crime, and eventually more efficacious in deterring the most corrupt and obdurate of mankind from the commission of it. If, then, the facts recorded in the Jewish history, if the prohibitions given in the Mosaic law, if the practices introduced in Christian countries during barbarous ages, and retained in later times from acquiescence in custom, or, perhaps, deference to religion, should be allowed, not indeed to impose any unerring rule for the *quantity* of punishment, but, to furnish a decisive proof, (as they certainly do) of the indignation and horror expressed in so many communities, and by so many governments against the *quality* of the offence—if the notion of punishment, that is, "of pain, annexed to an act; and

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* Quintil. lib. viii. cap. 3. Cicero. Epist. ad familiar. lib. ix, Ep. 22.

† Plato reasons on this principle:

"Φοβούμεθα πολλάκις δόξαν, ἡγούμενοι δοξάζεσθαι κακοὶ "πράττοντες ἢ λέγοντές τι τῶν μὴ καλῶν. * * * * * * "* * *. Ἆρ ἔν ἐκ ἂν νομοθέτης, καὶ πᾶς οὗ καὶ σμικρὸν "ὄφελος, τοῦτον τὸν φόβον ἐν τιμῇ μεγίστῃ σέβει, καὶ καλῶν "ἀιδῶ, τὸ τούτων θάῤῥος ἐναντίον, ἀναίδειάν τε προσαγο- "ρεύει, καὶ μέγιστον κακὸν ἰδίᾳ τε καὶ δημοσίᾳ πᾶσι νενό- "μικε;"

Plato de legibus, vol. II. lib. i. p. 646, 7. Edit. Serran.

" accruing on a certain account, and from a certain source, " be necessary to suggest notions of political duty *."—" If " punishment can be calculated to answer the purposes of " a moral lesson, by reason of the ignominy it stamps upon " the offence; and to inspire the public with sentiments " of aversion to those pernicious habits and dispositions " with which that offence appears to be conducted †—if example be the chief end of punishment, and if punishment accompanied by such circumstances as strike the imagination, and dealt out in such portions as satisfy the judgment, tend to make example itself more impressive, surely the great ends of justice would be better answered than they now seem to be, by some such regulations, as, with all becoming deference to Judges, to lawgivers, to men of reflection, and men of virtue, I shall here venture to detail.

Upon his first conviction, let the miscreant be confined for the space of four months Let him be debarred from all intercourse with other prisoners. Let him, at intervals to be appointed by the Sheriff, be brought forth into the market place of the county town, on three market days. Let him be dressed in a motley garb, partly male, and partly female. Let him receive, each time, fifty severe stripes from the common hangman; and, at the close of the third correction, let him publicly be made a Σιγματίας by a broad character deeply impressed ‡ upon his forehead.

On his second conviction, let the miscreant be imprisoned for six months; kept strictly alone; exposed four times in the market place; wear the same disgraceful garb;

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* See Fragment on Government, page 182.

† See Bentham's Elements of Jurisprudence, page 182.

‡ " Originally, even Burning in the Hand was not intended " as part of judgment by way of punishment, but only that the " criminal might be known on a second offence." (Dagge, vol. ii. p. 86.) But the measure which I recommend, would punish the offender by making him infamous for a first offence.

receive each time the same number of strokes from the common hangman, and have the same ignominious letter impressed upon both his cheeks.

A wretch thus indelibly and thus deservedly stigmatised, would be almost compelled

"Ον Θυμὸν κατέδων, πάτον ἀνθρώπων ἀλεείνειν *."

On the third conviction, let the miscreant be imprisoned for six months in darkness and solitude, produced publicly four times on four market days, dressed in the same garb as before, and scourged each time with a hundred stripes yet more severe by the hangman. After the last scourging, let him in private be made ἀποσπὰς by three professional men, who shall be bounden upon oath not to disclose in conversation what has passed. Let them certify, in writing, to the Sheriff, that this part of the sentence, (which is most needless, I am sure, and most shocking on all other occasions†, where it was formerly misemployed, but fit to be employed in *one* case only) has been duly executed. Let that certificate be conveyed to the Judge by the Sheriff, at the assize next ensuing. Let the Judge with all due solemnity and delicacy, declare the name, the crime, and the punishment of the delinquent in open court, and let the declaration be accompanied by such moral reflections as his wisdom may suggest to him. In order to prevent the possibility of evasion, and to *extend* and *perpetuate* the disgrace of the culprit, let his name, his offence, and his sentence, upon *every* conviction, be communicated by the Sheriff to a proper officer through every county court in the kingdom, and let no discretionary power of pardon, or even mitigation, be granted to the Judge, unless he, for weighty reasons, should entertain doubts upon the propriety of the verdict.

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* Iliad G.

† This was part of the punishment which by the 25th of Henry I. was appointed for "the counterfeiting of the King's "coin." (See Dagge, vol. iii. p. 160.)

But upon the fourth offence, *if* human profligacy be capable of reaching it, we may truly say with Mr. Bentham, that "the depravity of disposition indicated by the "act, adds" most largely and most indisputably, "to the "demand for punishment*." Let, therefore, the miscreant be nearly withdrawn forever from the view of his fellow-creatures. Let him be doomed to solitary confinement and to hard labour for life. Once a year, and upon the very day of his last execrable offence, let him be placed alone in a cage, and drawn to the place of execution upon a sledge by the meanest beasts of burthen. Let his name and his crimes be written upon a board affixed to the top of the cage. Let his covering be αἴγεια δέρματα sown together into one garment. Let a halter be thrown around his neck. Let his hands and feet be pinioned. Let his face be veiled as unworthy to behold an insulted species, and unfit to be itself beholden. Let the cage be suspended for one hour upon the gallows, and while he is thus exposed to public scorn, let him be protected from that brutal violence, which, neither on this, nor any *other* occasion, ought to be tolerated in a wanton or angry multitude, when the grave and equitable sentence of the law is to be carried into execution.

If the probable effects of punishments thus "character-"istical†," thus likely "not to be unpopular‡," thus *no-*

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* Bentham's Elements, page 148.

† "Punishment cannot act any further than in as far as the "idea of it, and of its connection with the offence, is present "in the mind. The idea of it, if not present, cannot act at all, "and then the punishment itself must be inefficacious. Now, to "be present it must be remembered, and to be remembered it "must have been learnt. But of all punishments that can be "imagined there are none of which the connection with the of-"fence

‡ Bentham's Elements, page 195.

rious, and thus *progressive*, be duly considered, I should hope that even the learned Chief Justice of Chester would not discover what has been called "a proclamation of im-"punity" in the serious and respectful proposal which I, or any other man, may make for the adoption of those punishments. In the mean time, I, from the bottom of my soul, am thankful to the moral governor of the universe, that the habits, principles, and feelings of my countrymen are *most* averse from the foul and pernicious practice of which I have been speaking. But upon an aversion so rooted, so unfeigned, and so salutary—an aversion which is generated and supported, not by the abject dread of stripes, or chains, or death, but by precept, by reflection, by sympathy, by example, by an exquisite sensibility to shame, and by a consciousness of dignity, both personal and national—Yes, upon these very circumstances, I would ground one plea for the introduction of such legal penalties as may sustain the virtuous sentiments of Englishmen—such as may gratify their honest pride, without wounding their humanity—such as, for the best purposes, may excite their just and holy indignation, without any check from ill-directed compassion. The mixture of pain with ignominy, which I would recommend, and the gradual increase of both, upon the successive convictions of an offender, must, I think, inspire the spectator with that kind of terror, blended with contempt, which would preserve his delicacy from the slightest violation; and, at the same time, would, in all probability, be so effectual upon the criminal, as to prevent that frequency which, as Beccaria and Mr. Eden well observe, tends to defeat the purposes of punishment, when it is applied *only* to a sense of shame in the sufferer, and the eye-witnesses of his sufferings.

Surely, my Friend, if the foregoing regulations were adopted, all the reasonable demands of policy, morality,

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"fence is either so easily learnt, or so efficaciously remembered, "as those of which the idea is already in part associated with "some part of the idea of the offence." (See page 189 of Bentham's Elements.)

and religion would be amply satisfied. The principle of *congruity* would be recognised by the imagination, the judgment, and the feelings of Englishmen in all conditions, and of all ages. Every memory would retain the name of the miscreant. Every head would approve of the sentence. Every heart would revolt from the hideous and perilous abomination. I ask not whether such penalties in the aggregate may not appear to the criminal more terrible than death, for which I wish to see them substituted. If according to the gradations I have pointed out, they are *sometimes* more likely to be inflicted than death, and when inflicted, are far more likely to be approved, our Penal Code, according to circumstances, will have the credit of moderation without laxity, and of strictness without cruelty. If the view of their separate or collective severity should furnish motives powerful enough to overcome all temptations to the crime, happy will it be for individuals, and for society. If it fail to do so, the delinquent at all events has time, and surely incitement to make his peace with Heaven, and by his punishment, partaking *more* largely of infamy than of pain, but combining *both**, his offence is sufficiently marked to satisfy the virtuous, and to alarm the profligate. On the other hand, death wholly excludes the culprit from that personal amendment which is the secondary and subordinate end of punishment, inflicted, when it has been threatened in vain; and of example, which is the primary and most useful end, death diminishes the force, partly by suggesting doubts on the proportion between a first offence and the only penalty denounced in our Code, and partly by wanting those external circumstances which, on such occasions, are *particularly* necessary to make every penalty appropriate and characteristical,

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* In a country where "nemo vitia ridebat, nec corrumpere "et corrumpi vitium vocabatur," the "pœna præsens et maritis "permissa" upon the adulteress was not death, but pain united with infamy. (See Tacit. de moribus German. page 294, Edit. Lips.)

and therefore, more efficacious. Doubtless the criminal is now detested. He is, also, destroyed. But he is soon forgotten, and the peculiar *deformity* of his crime is lost in that crowded and dismal mass of delinquencies to which a similar destruction of life is too frequently assigned by the authority of our laws.

In every reflecting mind difficulties will, for many reasons, arise upon the sorts and degrees of evidence fit to be admitted in such questions, before we abandon a fellow-creature to the *utmost possible infamy*, and before he is to be doomed, as our laws now direct, to a punishment which takes away his life, without setting any peculiar and permanent mark of reprobation upon his guilt. I must confess, that, upon several cases, I have been much dissatisfied with the testimony on which courts of justice have acted; and I fear that the strong and general abhorrence which men feel towards a certain atrocity—the eager desire of hunting it down, at almost every hazard, upon every occasion, and a lurking dread of being suspected not to hate the crime enough, unless they were manifestly and resolutely inflexible to crush the offender, have sometimes disposed them to acquiesce too readily in positive, but doubtful depositions, and unfavourable, but equivocal circumstances. After repeated, but fruitless efforts, I must leave it with others to propose such rules for admissible testimony, as shall meet the approbation of those *very* wise and *very* good men, who while they detest the crime adverted to, and, let me add, *because* they detest it *sincerely* and *deeply*, are most solicitous for human opinion and human laws to distinguish between the really and visibly guilty, and the really and even possibly innocent. Thus far I have written with an awful consciousness of my responsibility to God and man; and happy shall I be, if my well-considered and well-meant suggestions should induce any other of my enlightened contemporaries to investigate the subject with the same seriousness, and to communicate the result of their investigations with the same pure, honest, anxious regard for the reputation of our country, the authority of our religion, the

usefulness of our laws, and the present and future welfare of every person who is called upon to obey them.

Addition to the quotation from Mr. Burke on *mystery*, page 568, line 13, &c.

Mr. Burke's opinion upon the mysteriousness of government, and the general incapacity of the governed to estimate the merit of kings and ministers, resembles the language of Williams, Archbishop of York and Lord Keeper, when he was vindicating James against the remonstrances of the Commons in 1672:

"As the sun in the firmament appears to us no bigger "than a platter, and the stars are but as so many nails "in the pommel of a saddle, by reason of the enlargement "and disproportion between our eye and the object, so "is there such an unmeasurable distance between the "deep resolution of a Prince, and the shallow apprehensi-"ons of common and ordinary people, that as they will ever "be judging and censuring, so they must needs be obnox-"ious to error and mistake."

The eloquence of Williams is less splendid than Mr. Burke's. But the tenets of both will appear equally offensive to English subjects in the nineteenth century.

"*Tory auxiliary*," page 592, four lines from the bottom.

Much of the praise which Hampton's friend in one of his writings bestows upon Knolles's History of the Turks, may be extended to Mr. Laing's History of Scotland.

" His stile is nervous, elevated, and clear. A wonderful " multiplicity of events is so artfully arranged, and so dis- " tinctly explained, that each facilitates the knowledge of " the next. Collateral events are so artfully interwoven into " the contexture of the principal story, that they cannot " be disjoined without leaving it lacerated and broken. " There is nothing turgid in his dignity, nor superfluous " in his copiousness*."

The ardour of Mr. Laing in the cause of liberty is not disgraced by democratic coarseness or theoretic refinement. His inquiry into the controverted question of Mary's participation in the death of Darnley is minute without tediousness, and acute without sophistry. Whether I consider his sagacity in exploring causes, his clearness in relating facts, his vigour in pourtraying characters, or his ingenuity in unfolding and enforcing principles, I shall ever find reason to lament that the Continuation of Hume's History was not undertaken by a writer so eminently qualified as Mr. Laing is, for a task so arduous and so important.

" *Written speeches*," page 596, line 19.

In reading the written compositions assigned to speakers by Livy, Sallust, &c. we should always bear in mind the judicious observation of Cicero, who distinguishes them in their style from speeches really delivered.

" In historia interponentur, etiam conciones et horta- " tiones. Sed in his tracta quædam et fluens expetitur, non " hæc contorta et acris oratio†."

The thoughts, and to some extent, the words are

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* Rambler, No. 122.

† Orator, vol. i. page 159. Gruter's Edit.

adapted to the particular occasion on which they are employed, and to the general character of the person. But we do not find the varied and vehement language of a real speaker. The reader does not expect it. The writer could not furnish it. We are conscious of the illusion, but are at the same time satisfied with the historian, as we are with an artist, when his picture resembles the original.

"*Moeris, Thomas Magister*," &c. page 604, line 18.

As I wish you to know precisely what were the opinions of these grammarians on solœcisms, I hope that you will acquit me of pedantry in recommending to your notice the following passage from page 35 of Reizius de Prosod. Græc. Accentus Inclinatione.

"Soloecismum vocarunt Sophistae illius temporis, quid-
"quid non esset veteris elegantiae Atticae). Phrynichi
"exemplo, quos probarint auctores, videre licet. Eum
"Photius narrat probasse hos tantum, primo quidem loco.
"Aeschylum, Sophoclem, Euripidem; secundo loco, Pla-
"tonem, Demosthenem, et Aeschinem Lysaniae filium;
"tertio denique loco, Aristophanem, Thucydidem, Xen-
"ophontem, reliquos nouem oratores, Critiam Calaeschri
"filium, et Antisthenem. Hos igitur Sophistae ita proba-
"bant, vt quae illi non vsurpassent vocabula et loquendi
"genera, haec tanquam barbara et soloeca repudiarent.
"Eorum pars deterior, vt fit, scriptores aequales etiam op-
"timos ac disertissimos, qui non omnia quae noua essent
"aspernarentur, deridebant et contemnebant: quum interim
"ipsi non modo essent maxime ieiuni atque inficeti, sed ne
"didicissent quidem satis, neque quid antiquum, neque quid
"rectum omnino et elegans esset, dicerentque plurima non
"tantum noue, sed etiam praue atque absurde."

Wolfius, the learned annotator upon Reizius, very properly refers us to page 39 sqq. of Pierson's Preface to Moeris, where the same subject is discussed very copiously and judiciously. I shall not quote the words of Pierson, because his edition of Moeris is a much more common book than the work of Reizius.

"*Forgetfulness*," page 604, line 23.

Let me be pardoned for adding one more instance of faults committed by censors. Hieronymus, Cicero tells us, had collected from Isocrates, "triginta fortasse versus, plerosque senarios, sed etiam anapæsta. * * * * Sed tamen *hic corrector, in eo ipso loco quo reprehendit, emittit imprudens ipse senarium* *."

"*Temporal power*," page 632, line 30.

As the temporal power of the Pope is now almost annihilated, the opportunities for him to aim at any extension of territory taken away, and the incitements for him to engage directly in the wars of European sovereigns very much diminished, there may seem little room for Mr. Gibbon's objections on the advanced age and confined education of the persons who fill the chair of St. Peter. To me, however, it appears, that, for *other* reasons, these objections have now greater force than ever. In the present state of Europe it is peculiarly necessary for the Bishop of Rome to unite

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* Orat. p. 168, Ed. Gruter.

great sense with great moderation, and to avoid the appearance, as well as the reality, of interference in the secular concerns of Princes, whether Catholic or Protestant. If the discipline of the Roman Catholic church be gradually adapted to the exigencies of the times, and a spirit of sound discretion and forbearance be encouraged in the priesthood, it may be safely left with the wisdom of his Holiness, jointly, I should imagine, with the authority of Councils, to adjust matters of doctrine, to avail themselves, as to them may seem fit, of the general progress made by civilized nations in various branches of useful knowledge, and to correct, or continue errors, whether real or supposed, upon political, and even moral and religious grounds, of which Protestant teachers, after all, may be incompetent and prejudiced judges. Freedom of enquiry in private persons, when far extended, and quite unshackled by artificial restraints, is favourable to the discovery of truth, and through the progressive influence of truth upon practice, is eventually conducive to the best interests of society. But changes made by authority in the tenets of a religion long established, require great circumspection in the choice of time and measures—great observation upon the permanent and fleeting, prominent and latent, causes of manners and opinions—great insight into the political history, as well as the theological reasonings of controversy—great knowledge of past and present circumstances—great impartiality and sagacity in the calculation of future consequences. Why then should we censure any other church for asserting that right which may be judiciously and virtuously exercised by our own?

The intellectual and active pursuits of men—the relations in which they stand one to another as individuals or classes—the views which they take of their interests and perhaps their duties—Governments, manners, and many other external objects connected with their agency, are continually, though for a time imperceptibly, undergoing more or less alteration. Hence in their ecclesiastical as well as their civil concerns, *real and complete* uniformity is neither attainable, nor indeed desirable, through many successive generations. Even among those who set up the highest pretensions to such uniformity, Changes, which it were vain

to dissemble, will in many instances be discovered by unprejudiced and serious observers. The well and the ill-directed love of truth, the struggles of literary and political competitions, the warfare which arises between the stubbornness of bigotry and the ardour of novelty, the disuse of old terms, and the introduction of new ones, both in familiar and scientific language, co-operate with many other causes in giving a different turn to the sentiments of reflecting and unreflecting men upon religious subjects. But true policy as employed in watching the properties and extent of those causes, is inseparable from true morality; and in the absence of selfishness, or indifference, or superstition upon the part of those who govern the affairs of the world, it might not be very difficult to balance the comparative inconveniencies of precipitation and delay. An ecclesiastical establishment which is intended to guide the bulk of mankind ought itself, in some degree and upon some occasions, to be guided by those principles, or modifications of principles, which have slowly found their way to the conviction of wise and virtuous enquirers. I therefore believe that every religious community, keeping in view the numerous and interesting circumstances which I have mentioned in a foregoing paragraph, might be progressively improved by well-timed and well-conducted revisions of its tenets and its discipline. Yet "a church which *frequently* "modifies, varies and changes its doctrines," is, I do not say with Bossuet, "destitute of the direction of the Holy "Spirit," but, I do say, deficient in that sound discretion, which, aiming at general utility, and looking to the comparative importance as well as credibility of religious opinions, would practically forward the most proper and most beneficial purposes of a national church, to which the laws wisely intend to assign *permanent*, as well as extensive, influence. Upon the favourite maxim of Bossuet, Mosheim and his learned Editor have made some very judicious observations, which may be found in page 310, volume four, of Mosheim's Ecclesiastical History, second edition.

"*Fanaticism under all disguises*," page 687, line 34.

"When Ravaillac assassinated Henry the Fourth it was "from a principle of religion. But this did not so much "abate from the mischief of the act. It even rendered the "act still more mischievous, for a reason we shall see pre- "sently, than if it had originated from a principle of "revenge*."

The reason is thus explained in page 165.

"As to the motive of religion, whatever it may *some-* "*time* prove to be in point of strength and constancy, it is "not in point of extent so universal, especially in its appli- "cation to acts of a mischievous nature, as any of the three "preceding (i. e. self-regarding) motives. It may, however, "be as universal in a particular state, or in a particular dis- "trict of a particular state. It is liable, indeed, to be very "irregular in its operations. It is apt, however, to be fre- "quently as powerful as the motive of vengeance, or, in- "deed any motive whatsoever. It will sometimes be more "powerful than any other motive. It is at any rate much "more constant. A pernicious act, *therefore*, when com- "mitted through the motive of religion, is more mischie- "vous than when committed through the motive of ill-will."

On the word conscience there is an interesting Note, of which I shall produce the most interesting part.

"Fanaticism never sleeps; it is never glutted; it is "never stopped by philanthropy, for it makes a merit of "trampling on philanthropy; it is never stopped by con- "science, for it has pressed conscience into its service." The foregoing observations are founded upon an accurate knowledge of human nature; and many of my countrymen, from their experience of the past, and with their prospects of the future, would do well to reflect upon the justness and importance of them.

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* Bentham's Elements, p. 162.

Let me take this opportunity of commending, as I ought to do, most sincerely and most ardently, three pamphlets, for which the well-wishers to genuine Christianity and our ecclesiastical establishment are indebted to Mr. Sedgwick *. His statements of facts, his arguments from reason and scripture, and his animated description of characters, do honour to the elegance of his taste, the vigour of his understanding, and the soundness of his moral and religious principles. They will preserve, I trust, many well-meaning and attentive readers from the sorceries which might be practised upon their credulity and their piety. But fanaticism, when it has once taken possession of common minds,

"Nec modum habens neque consilium, ratione modoque
"Tractari non vult†."

The attic raillery of Addison, the caustic satire of Swift, the solid reasoning of Locke, the energetic eloquence of Barrow, the profound learning of Taylor, Pearson, Bentley, and Stillingfleet, the pious expositions of Christian Fathers, the glowing expostulations of Prophets, the simple, sage, and solemn preaching of Apostles, would be of little or no avail, when opposed to them stand the

"Θεόκλητοι, θεοδίδακτοι, θεόσυτοι, θεόπνευστοι, θεόγλωσσοι,
"κήρυκες Ιησοῦ χριστοῦ,"

such as Whitfield, Wesley, Romaine, Haweis, Hawker, Rowland Hill, Newton the midshipman, Bunyan the tinker, Boehmen the shoemaker, and other nameless rhapsodists, whose

"Θεόρυτοι καὶ θεοτέρατοι λόγοι,"

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* Let me add, that in the first Number of Mr. Cumberland's Review there is a most argumentative and animated critique on the Life of Mr. Newton lately published by Mr. Cecil.

† Horat.

however understood and admired they may be in some of our conventicles, are not so well adapted to pulpits in what I think the best Ψυχῆς Ἰατρεῖον in Christendom, the Church of England.

I have often endeavoured to understand the grounds and the properties of that vital religion which is so eagerly inculcated, and so loudly extolled. But the spirit of it I must confess

Οὐκ ἐμοὶ χριστὸς δοκεῖ,
" ' Ἀλλ' ἔστι πολλῶν ὀνομάτων ἐπώνυμος.
" ' Ἔστιν μὲν ᾄδης, ἔστι δ' ἄφθιτος Θία,
" ' Ἔστιν δὲ λύσσα μαινάς *.' "

The rapidity, stubbornness, and virulence of the malady which is spreading around us, are equally alarming. By a process scarcely paralleled in any other kind of intellectual or moral aberration, this *mentis grotissimus error* diffuses its influence from the whole head, over the whole heart. It appears to endow men with eyes which see not, and ears which hear not. When philosophy, or history, or criticism, offers any aid to the fanatic, he either

" Fit pugil, et medicum urget †,"

or answers with mingled scorn and self-complacency to the following effect:

" Ἐᾶ με τήνδε τὴν νόσον νοσεῖν, ἐπεὶ
" Κέρδιστον ἐῦ φρονοῦντα μὴ δοκεῖν φρονεῖν ‡."

Now the nobility and gentry among the Roman Catholics have a visible interest in watching and restraining the zeal of Roman Catholic Priests. Rational Dissenters (as they denominate themselves) have embraced a theolo-

* Fragm. Eurip. or Sophocl. † Horat.

‡ Æschyl. Prom. Vinct. lin. 384.

gical system which carries with it few allurements to enthusiasts; and widely as they may differ from the doctrines of the English church, they have far less to dread from its discipline than from those "wholesome severities" which in the giddiness of power, and the blindness of bigotry our evangelical sectaries would be impelled, by their conscience truckling to their ambition and vengeance, to employ against what *they* would call the impious heretic, and the factious schismatic. Is it not sound policy, then, to conciliate the Roman Catholics and Rational Dissenters, and at the same time *not* to oppress the common foes of them and the establishment—not to irritate them by contumelious and legal disabilities for this or that secular office—not to subject them to stripes, or imprisonment—God forbid this!—but, by well-considered and well-applied regulations to *restrain* them, as men who might be ready to do evil that good, according to their own peculiar apprehensions of duty, and perhaps their own views of their own peculiar interests, may come—men, who actually do hold language not only the most insulting to a learned priesthood, but the most inflammatory to illiterate hearers? In a printed paper, and with the signature of their names, have not twelve of these officious missionaries boasted of having lately *introduced the gospel* in the neighbourhood of a city where, according to the import of their words, and the conceptions of their followers, Heathenism, or Mahometanism, or Judaism, or rank Deism, *may* have been heard, but the gospel *has not*, for centuries upon centuries, either in parochial churches or a cathedral? Not very long ago, nor very far from the place, where I have resided for more than twenty-three years, and where, to say nothing of well-meant, and, perhaps, well-chosen advice conveyed by sermons, the service of our Common Prayer Book—a service, established by the national laws, endeared to us by long use, prepared at first by Protestant reformers, and some of them, Protestant martyrs, improved by subsequent revisions from learned prelates and dignitaries, selected in many parts from the offices of Christian churches, and the works of Christian Fathers, written almost every where in a clear and most impressive style, replete with instruction to the young and the old,

the rich and the poor, the prosperous and the unfortunate, the virtuous and the wicked, and in addition to all these excellencies of human composition, containing large portions of *scripture* in the Psalms, Lessons, Epistles, and Gospels—Yes, in that very sanctuary where this very service is generally performed with due exactness, and, I would add, seriousness, one of our evangelical preachers, in the presence of a plain and well-disposed congregation, mingled at the moment with a crowd of vagrant and intrusive Methodists, expressly and unblushingly talked of himself as *introducing* to his dearly-beloved hearers, a *stranger*, Jesus Christ.

Introduce seems to be an occasional watch-word of these Modern Hirim—a tessera by which the faithful champion of religion is distinguished from the lukewarm hireling who at any time puts his trust in the "carnal weapons" of reason and morality—a Shibboleth which separates the true Gileadites, happily gifted with "tongues that are for a "sign," from the recreant and babbling Ephraimites.

If persons bearing high academical titles, and fancying themselves in theology, "τρίτου κρατῆρος γεῦσασθαι," thus in effect represent the whole service of the church as established by law, and the whole preaching of churchmen, except their own, as having in them *no* portion of Christianity, what are we to expect from other teachers, who understand "ὀυ-
"δὲ τὰ τρία Στησιχόρου;"

When language of this portentous kind is gravely uttered in the sanctuary, it makes, and is intended to make, an instantaneous and deep impression, which no smooth explanations, no sly evasions, no partial and compulsory retractations can afterwards efface.

"The Papists," exclaims the fanatic, "keep the scrip-
"tures from the laity. The English clergy read them, but
"cannot teach them, for they understand not the saving
"truths of the word, nor feel its vital energies. Precious,
"therefore, to us, and quite inestimable, is the privilege of
"comparing the regenerate state of man with his unrege-
"nerate. When the 'wind blew,' we, like other blind and
"reprobate sinners, 'vainly puffed up by our fleshly minds,'
"once supposed ourselves to know 'whence it came, and whi-

" ' ther it was going.' But we thankfully remember, when, " and where, and by what lips touched with the dew of sacred " truth, the ' gospel was first declared' unto us. To us it " is now given to understand the mysteries of the kingdom " of heaven, to be endowed abundantly with the ' means " ' of grace, and to be refreshed with ' the sure and certain " ' hope' of glory. In the mean while the nominal Christian " followeth things which have only a ' shew of wisdom, and " ' is taken in his own craftiness.' "

But, surely, dear Sir, there is no real evil, no unseemly appearance of evil, no dimness in that goodly aspect which a Christian church favoured by the laws ought to wear in the sight of the Christian world, when separating the strength from the weakness of human reason, we call in profane learning to our aid in the study of sacred—or, when we blend the principles of morality, and occasionally even the words of wise and virtuous sages, with the simple and hallowed language of holy writ—or, when we insist upon the love of our neighbour, as a sure criterion of sincerity and proficiency in the love of our Maker—or, when we investigate the evidence which natural religion supplies for the probability of a *future state*, and at the same time distinguishing between that evidence, and the animating prospects which revelation opens to us, we hold up to the admiration and the gratitude of mankind, the doctrine of ETERNAL LIFE, as especially and solely the unmerited and covenanted " *χάρισμα τοῦ θεοῦ ἐν Ιησοῦ χριστῷ.*" If this be Heathenism, where are the well-educated or the unlearned to look for Christianity? Not, I am sure, in those new lights which we cannot follow without maintaining, that for many revolving ages, and amidst the acknowledged progress of society in art, science, and civilization, yet, in concerns far weightier, the clergy and laity have been doomed to wander in utter darkness, mutually deceiving and deceived, mutually corrupting and corrupted—not in quarters where pharisaical ambition may be lurking, and pharisaical pride has already stalked forth in open day—not among the rapturous panegyrists of faith and grace, exclusively understood, and exclusively, forsooth, experienced by them-

selves—not among the insidious or contemptuous revilers of good works, which being "written by the law on our hearts," and carrying with them "the witness of our consciences," are recommended by us, the unenlightened and unregenerate as indispensable conditions of salvation to all true believers, and indeed all moral agents. That the majority of Christians in every church and almost every sect, have not yet been called to the knowledge of any "saving truth," and that a few only have been chosen to partake of it, is a position not very likely, I think, to support the spirits of those who have embraced, what we call, the gospel, or to check the triumphs of those who reject it. So, however, within the bosom of the established church, do some men teach, and so, within as well as without the pale of it, do many believe.

As a friend to toleration, I would not impose restraints upon mere opinion in controverted points of doctrine; and of my consistency I give a plain proof, when knowing, and in many points differing from the respective creeds of Rational Dissenters and Roman Catholics, I should be glad to see both of them delivered from certain distinctions, which are directly offensive, and may be indirectly, as some men think, even oppressive. But the froth of petulance and the foam of zeal cease to be only contemptible when mingling with the venom of malevolence they are scattered in the sanctuary. Hence, as a well-wisher to decorum, to christian charity, and to the public peace, I think that such presumptuous vauntings, such outrageous revilings, such mischievous *insinuations* as I have stated in two of the foregoing pages, call aloud for some notice from the legislature. Have not our forefathers been told, that "dominion is founded in grace?" Silent, indeed, but rapid is the growth of such grace, and who, but the elect, are worthy to experience its impulses? But they who *introduce the gospel* to-day may hereafter think themselves qualified and even commissioned from above to *found a State*.

"The passions," says Malebranche, "justify themselves," and it has often been remarked, that hypocrites, while they deceive others, are themselves by themselves deceived. Ambition, however disguised in the garb of hu-

mility, is steady in the pursuit of its own purposes, and fanaticism, however it may revel in the luxuries of its own visions in heavenly things *, is wont to turn an oblique and

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* Experience shews that a spirit of fanaticism is cherished by the circulation of prophecies, which, however they may point for a time to *one definite event*, prepare the minds of the credulous and illiterate for participation, or at least *acquiescence*, in *other* changes, as *means* for the *final* accomplishment of the desired end. I shall, therefore, leave the venerable prelates, and other guardians of the English Church, to their own reflections upon the *ultimate* tendencies of a letter which appeared in the Birmingham Commercial Herald of May 1, and the Birmingham Gazette of May 8, 1809, which is signed by a grave clergyman of the Establishment, and which, from the circumstances of publication and republication must have been designed to excite much attention, and to produce considerable effect, in a large manufacturing town and its neighbourhood. After stating that "a Joanna Southcott had been falsely accused of three heavy charges—that, as "to the first charge, though Mary Bateman, who had lately "suffered the just sentence of the law at York, *had* a seal, yet, "the wicked and diabolical conduct of Bateman can no more, in "justice, be ascribed to Southcott," who, as it appears from the sequel, distributed *her own* seals, "than the wicked and diabolical conduct of Judas can be ascribed to our blessed Lord, "because he was one of his disciples; and this the *wise will* "*understand, though the wicked will not :*"

That as to the second charge, Southcott had *not* predicted the destruction of Bath on Good Friday, but had pronounced the person who uttered that prediction "a false prophetess :"

That as to the third charge, Southcott, "on the evidence of "FIFTEEN THOUSAND PERSONS, could be proved not "to have sold her seals for half a crown each, nor suffered them "to be sold, but to have given them 'without money and without "'price' a FREE GIFT to all who had *faith* to believe in her "*inspired writings*, as well to the poor as to the rich :"

The reverend writer thus proceeds :

"I shall

"lingering look" to things earthly, *not*, we shall be told, as ultimate ends, but as favourable means for introducing and diffusing vital religion among nominal Christians. Now the spirit, as well as the notions of the old Puritans, has spread itself among certain sectaries of our own days, and their allies in the English church. Hence, towards the Roman Catholics,

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"I shall give a short sketch of her divine mission, which is "to warn the world of the second coming of the Lord Jesus Christ, "to destroy Satan's kingdom of misery, evil, and woe, and to "establish his own glorious kingdom, of love and peace upon "earth for a thousand years, as is promised in the 20th chapter "of the Revelations, when HE will reign IN SPIRIT during that "period among the children of men before the general judg-"ment.

"Her writings only lead those who will follow their directi-"ons to the scriptures of truth, and point out HOW the promises "and prophecies of that golden book, the Bible, will be fulfilled "and accomplished; and demonstrate irresistibly, that the king-"doms of this world will SOON become the kingdom of the LIV-"ING GOD, and HE will reign for ever and ever. Illustrious "Era! Thine it is to close the long series of preparation which "Providence has been carrying on from the first of time! Thine "to fulfil the wishes of the worthy and devout of every age, and "every clime! Thine to recover man from depredations and dis-"honour! Thine to consummate the mission, and to adorn with "its brightest honours THE CROWN of the Saviour of the World! "Thine to vindicate the government, glorify the perfections, and "illustrate the all-bounteous character of the God of Love! Thy "approach, glad period, will be hailed by myriads of intelligent "beings, who animated by thee with a celestial glow of devotion, "will give EXPRESSION to their raptures in the long-suspended "song of angels—'Glory to God in the highest, on earth peace, "'and good-will towards men.'"

THOMAS PHILIP FOLEY,
Rector of Old Swinford.

Old Swinford, Worcestershire, April, 1809.

I would

" vetus atque antiqua simultas *,
" Immortale odium, et nunquam sanabile vulnus
" Ardet adhuc †."

I would beg leave to state that the animated conclusion of Mr. Foley's Letter, beginning with the words " Illustrious æra," is taken almost verbatim, without acknowledgment, from the close of a very eloquent Sermon, delivered at Newport in the Isle of Wight, on the Fast Day in 1803; written by the Rev. Robert Aspland, who does not speak of a Millennium; and printed at Cambridge in 1804, by B. Flower.

* I cannot yield unqualified assent to the sarcastic observation of Mr. Gibbon, that, " the vices of the clergy, to a philosophic " eye, are far less dangerous than their virtues." I hold the *general* proposition to be false, and I should hope, that if he " who pro- " fessed even in a conqueror or a priest to *surprise* a word " or an action of unaffected humanity," (Vol. v. p. 155, 251.) had looked with an unprejudiced eye on the English clergy of his own days, he would have found abundant reason for approving in them the practice of those virtues which adorn and sustain society, and none for being *surprised*, if he were to have found, that such virtues are congenial to the letter and the spirit of the religion which they profess. But I do most unfeignedly agree with Mr. Gibbon, when he says, that " God has written " his existence on all his works, and his law in the heart of man" (p. 205.)—that " benevolence is the foundation of justice, since " we are forbidden to injure those whom we are bound to " assist—that a prophet, though he may reveal the secrets of heaven " and futurity, can in his *moral* precepts only repeat the lessons " of our own hearts" (p. 205.)—that " *many a sober Christian* " *would rather admit that a wafer is God, than that God is a* " *cruel and capricious tyrant.*" (p. 537.) If it be said, that an infidel, even where he is neither directly nor indirectly defending the cause of infidelity, rarely sees truth, or writes good-sense on subjects of religion, I should reply that the passage last quoted from Mr.

† Juven. Sat. 15.

That hatred may be mingled with sincere disapprobation of some opinions now maintained by the Church of Rome. But it may also be accompanied by other considerations *not entirely spiritual*—I mean, by a secret and restless jealousy of that *ascendancy* which a religious instructor in the Romish or any other church may be supposed to gain over his followers, when they have once been persuaded to associate the idea of *merit* with prompt and implicit assent upon mystical, or controverted points of doctrine—to confound inexplicable phænomena with contradictory propositions—to admit interpretations of scripture, which upon strict enquiry may appear to be *against* reason, under the pretext that the subjects are *above* it—to abandon what is plain, for the sake of dogmatising upon what is obscure—to pronounce a favourite teacher infallible in his tenets, because they are the immediate and genuine suggestions of the "Spirit," not "given to him," by a scant "measure," but abundantly, as is meet and even necessary for the holy duties of one who is professedly and pre-eminently "an apostle according to the faith of God's elect."

"En animam et mentem, cum quâ Dii nocte loquantur."

From the usual deceitfulness of the human heart, the

Mr. Gibbon, though similar in principle, does not carry the conclusion from it quite so far as it has been carried by Lord Bacon: "It were better," says this great and real philosopher, "to have "*no* notion of God at all, than such an opinion as is unworthy of "him; for the one is unbelief, the other contumely." (Essay 18.)

They who hold, as I do, that in addition to the bad tendency of Atheism upon the morals of men in private life, it may *co-operate* very powerfully with other causes, "in perturbing states," will agree with the same philosopher, where he in the same essay, observes, "Superstition" (he means when united with fanaticism, as it often is) "hath been the confusion of many states, and bringeth "a *primum mobile*, that ravisheth all the spheres of government. "The master of superstition is the people, and in all" *such* "superstition wise men follow fools, and arguments are fitted to "practice in a *reversed* order."

love of power has already incorporated itself with the real or pretended love of truth. The actual attainment of power may hereafter be insisted upon as a presumptive argument for the actual discovery of truth. But when power begins to be exercised, and truth to be disseminated by such persons as many of our modern claimants to evangelical knowledge seem to be, disguise will be thrown aside, as useless, restraint will be defied, as ineffectual, desire will increase with possession, right will grow out of conscious strength, and a "new earth," as preparatory to a "new heaven," will soon become the favourite object of reformers, who have met with external opportunities, and are guided by internal impulses to "*make all things new.*"

Mr. Pitt, if he were living, would not be inattentive to the numbers of these Evangelical Christians, their activity, their ample funds for the purchase of presentations and advowsons, or their spiritual alliance with two powerful classes of professed, and so far, honourable sectaries. Mr. Fox, with equal unwillingness to invade their social rights, and equal foresight of the dangers to be expected from their unsocial temper, would have been disgusted with their arrogance and their uncharitableness—Mr. Burke, without having recourse to invidious and rhetorical exaggeration, might have rendered to his country a most important service, by describing their spirit, unravelling their sophistry, and developing their real and their distant views—Mr. Canning, I am sure, has too much good-nature to be tainted with their virulence, too much good-sense to be decoyed by their wiles, and too much taste to be captivated by their harangues. He is more conversant, I believe, in Pindar's odes, than Wesley's Hymns; and if one of his colleagues, *factus de Rhetore Consul*, were to expatiate upon the soothing *unction* administered by these skilful physicians of the soul, the witty, but unregenerate secretary, might be tempted to throw the *new light* of common sense upon the phrase, and apply to it what Cicero said of Carian, Phrygian and Mysian declaimers. "Quod minime elegantes sunt, adsciscunt *aptum suis auribus* "opimum quoddam et *adipatæ* dictionis genus*."

* Vid. Orator, vol. i. p. 156, edit. Gruter.

"*As such*," page 700, line 34.

I disdain to insult any writer, and much more a contributor to the British Critic with verbal cavils. Now in page 700, I had occasion to confess my inability "to understand distinctly to what the words, 'as such,' employed "by the Reviewer in his critique on Mr. Fox's History, "'refer.'" Upon a subsequent perusal, I am inclined to believe the meaning to be this. "No confession Monmouth "could make, of which his rebellion against James, and his "connection with Lady Harriet Wentworth did not form a "part, could be received by the Bishops according to the "rubric," *inasmuch as* that rebellion and that connection did not form a part of that confession. If this be the meaning of the learned Critic, he will pardon me for saying, that in my opinion the passage gains nothing in precision, and loses *something* in perspicuity, by the addition of the words "as such." It would have been intelligible to any reader *without* such addition, and after repeated trials was perplexing to my mind, *with* it. But when the explanation I here offer is admitted, I see no reason for altering the terms in which I have stated the *rem quade agitur* between the Reviewer, as the accuser of Mr. Fox, and myself as his advocate. The rubric does not, like a book of casuistry, set before us a long series of particular cases, and then point out those in which a minister is to require special confession, and those in which he may dispense with it, and be content with a general one. The same rubric, indeed, does contain directions, according to which, the minister under certain circumstances is to call for a particular confession from a man who is desirous of taking the sacrament, and, also, to *move* a sick man to confession when he is troubled in his conscience, and wishes to be absolved. But it does not contain either *general* or *special* directions for a clergyman to require either *general* or *special confession* from a person who, like Monmouth, was at the place of execution; and this is the very point upon which the Re-

viewer and I are at issue. If, then, generally, though tacitly, the rubric *permitted* the Bishops to accept a general confession, upon *such an occasion*, the Reviewer does not stand in need of any aid from me to discover, that the particular case of Monmouth, both in his rebellion against James, and his intercourse with Lady Harriet Wentworth, not being particularly excepted, falls under the general permission.

This minuteness, I fear, will be tiresome to my reader. But it will convince the Reviewer of my respect for him, and of my great unwillingness to misunderstand him, and to be myself misunderstood.

"*Idolator*," page 760, line 6.

I will tell a plain tale, not with any wish to palliate the practice of image-worship, but in order to correct a popular mistake, which I have sometimes read in theological books, and which imputes to the Roman Catholics great unfairness in their management of the Decalogue.

"In the *division* of the Decalogue, the Christian "churches are not agreed. The church of England, and "the whole body of Calvinists, with Josephus, make two "distinct precepts of verses three, seven, Exodus xx. where-"as the Roman Catholics and most Lutherans divide with "St. Austin, and make one commandment of what the "former make two, but to keep up the number of ten, they "split what in the other division is deemed the ninth com-"mandment*."

Every one who looks into Walton's Polyglot may see that the command not to make "sculptile neque omnem "similitudinem, &c. neque adorare ea, nec colere" is re-

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* Geddes's Note on verse 4, Exod. xx.

tained in the Latin Vulgate: and surely as to the *division* "it is of so little importance, that we may wonder it ever "could beget a controversy. Yet, it has not only begotten "vehement controversies, but unfounded misrepresentations "on the part of Protestants, who maintained that the "Papists had *thrown* the second commandment *out* of the "Decalogue, because it condemned their image worship *." "What seems," he adds in a Note, "to have given *rise* to "this, was, the whole commandment having, in elementary "Catechisms been thus abridged: 'Thou shalt have no "'other Gods but me;' in the same manner as the pre-"cept concerning the sabbath-day is frequently abridged "into, 'Remember to keep holy the Sabbath-day †.'"

In the admirable summary of the English church upon our duty towards God, not a single word is said about the interdict given to the Jews against making or worshipping graven images; *nor through the whole* of our Catechism is there any express caution introduced against the practice of the church of Rome.

The learning and acuteness of Dr. Geddes made him a competent witness. But did his education and office in the Church of Rome leave him a credible one? Yes, for unless he were destitute of common sense, and common honesty, he would not in the eighteenth century have ventured to misrepresent, where any ordinary scholar could with ease have detected his misrepresentation. But let the question be decided by the following passage, which among many others, strongly marks the candid and ingenuous mind of Geddes.

"Nothing could be more ridiculous than the violent "declarations of Protestants against the use of images in "the Romish church, and the application of this precept "to that use; although, on the other hand, it must be con-"fessed, that the *use* has sometimes been turned into an "*abuse* bordering on idolatry." Hence, though Geddes in

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* Geddes's Note on verse 4, Exod. xx. † Ibid.

his translation of the Hebrew word פֶּסֶל has followed Jerome and the Gr. ver. "carved worship;" he has added in italic characters the Septuagint version, εἴδωλον. Dr. Geddes would, I believe, have given Mr. Fox credit, as I do, for his moderation, in writing "imputed idolatry;" and the Dr. has himself allowed some grounds for the imputation to exist.

The most satisfactory arguments to my mind are the principle rather than the letter of a Mosaic prohibition, originally directed against Ægyptian idolatries, and closely intervowen with the whole political as well as religious system of the Jewish theocracy: the scriptural doctrine of one mediator, and the danger of transferring to any visible representations of the Creator or his creatures tha homage, which is due only to one invisible and spiritual Being. I am dissatisfied and even disgusted with some passages in the famous letter of Gregory the Second to the Emperor Leo. I have much to oppose to the reasoning of other and later Romanists. But I respect their researches in literature, and their acuteness in controversy. I am not warranted in arraigning the sincerity of their belief, or the uprightness of their intentions; and at all events I should be ashamed of urging against them any invidious and even false accusations of disingenuous omission, or unauthorised arrangement in the Decalogue.

On the evidence of our newspapers, the editors of which, upon such topics, rarely err, and yet more rarely have any temptation to misrepresent, I stated in page 777 that a motion had been made in Parliament for extending to Scotland the capital punishment which in England has long been inflicted upon offenders convicted of Infanticide; and as the account was not afterwards corrected, I thought it my duty to offer some objections to the supposed harshness of the statute. Great, however, was my satisfaction upon finding, as I have done, within these few days, that

the chief object of the motion is to procure the *repeal* of an act which passed in the reign of James the First, and which made the concealment of the birth of a child a proof of murder, unless the mother could shew that it was not born alive; that the Bill, therefore, is a measure not of rigour, but clemency; that the provisions of it seem to be founded upon some principles for which I have myself contended; that the spirit of it cannot fail to be acceptable to the enlightened people for whose benefit it is designed; that the mover of it has supplied an additional exception to that general reluctance which has been observed in professional men, to mitigate the severity of penal laws, and that for his wisdom and humanity he is eminently entitled to the thanks of his countrymen, and the praise of his contemporaries. I could not without great inconvenience exclude from this volume the sheets which had been printed off before I received the information above-mentioned. But the seeming impropriety of suffering them to remain is in some degree lessened by the probability, that several of the observations contained in them have a tendency to answer other useful ends, besides those to which they were primarily and more immediately directed.

When my subject led me to give a more correct account than Petit has done, of the Athenian practice in exposing children, I took occasion to state my opinion that a similar practice among the Romans was of great antiquity. I shall, therefore, in this place insert a passage, which not only establishes the fact, but contains more direct information upon the origin and provisions of the Roman law, than I have hitherto been able to find upon the author and contents of the Athenian.

" πρῶτον μὲν εἰς ἀνάγκην ὁ Ῥώμυλος κατέστησε τὰς οἰκή-
" σεις τῆς πόλεως ἅπασαν ἄρρενα γενεὰν ἐκτρέφειν, καὶ θυγατέ-
" ρων τὰς πρωτογόνους· ἀποκτιννύναι δὲ μηδὲν τῶν γενομένων
" νεώτερον τριετοῦς, πλὴν εἴ τι γένοιτο παιδίον ἀνάπηρον, ἢ
" τέρας εὐθὺς ἀπὸ γονῆς. ταῦτα δ' ἐκ ἐκώλυσεν ἐκτιθέναι

"τὰς γειναμένας, ἐπιδείξαντας πρότερον πέντε ἀνδράσι τοῖς "ἔγγιστα οἰκοῦσιν, ἐὰν κἀκείνοις συνδοκῇ. κατὰ δὲ τῶν μὴ "πειθομένων τῷ νόμῳ ζημίας ὥρισεν ἄλλας τε, καὶ τῆς οὐσίας "αὐτῶν τὴν ἡμίσειαν εἶναι δημοσίαν*."

From the foregoing passage it appears that the regulations of Romulus in some respects resembled those of Lycurgus, and were adapted to a military people, to whom bodily strength in man was a necessary qualification for the defence of the state, and to whom it was also of importance for the number of males to exceed that of females. The right, then, to expose children was at once granted to parents, and subjected to regulations, at Sparta and Rome. But we are quite ignorant what were the restrictions upon the same right, or, indeed, whether there were any, among the Athenians, in the constitution of whose government there are fewer traces of the military character than we find in the laws ascribed to Lycurgus and Romulus.

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* Dionys. Halicarnass. lib. ii. p. 88, Edit. Sylburg.

ERRATA.

Page 180, line 15, add, the most abstruse and, *before* uncommon —p. 184, l. 15, *lege, richest*, for rich—p. 185, l. 10, for imitation, *l. approbation*—p. 190, in the refer. for Tuscular, *l.* Tusculan.—p. 196, l. 5, *l.* ὅσοι—p. 197, l. 6, for proponderancy, *l.* preponderancy—202, l. 17, *for* proscription, *l* prescription—209, l. 12, for in, *before* the greater, *l. on*—p. 213, ls. penult. & ult. for, *a right judgment*, *l.* right judgments—p. 227, l. 11, for mintage, *l. mint*—p. 229, l. 17, for opinions, *l.* sentiments—p. 236, l. 17, for, mind of man, *l. minds of men*—p. 239, l. 22, for condemation, *l. condemnation*—246, l. 9, *l.* ἀληθὲς, & ἔλεγχος—257. l. ult. for these, *l. this*—274, l. 7. *l.* ἐς—274, l. 23, for yet, *l. even*—275, l. 2. insert, *not*, before, been employed—293, l. 16, for less *l. more*—294, l. 8, for nunquam, *l.* nusquam —297, l. 3, insert *esse*, before judicasset—299, in the reference *l.* senectute—300, l. 14, *l.* ἐμῶν—300, l. 18, *l.* ἐὰν, for ἐαη—301, l. 6, for πράττεω, *l.* πράττειν—p. 301, l. 7, *l.* μή τε, before ἀδικωτέραν—309, l. 5, for rempublicum, *l.* rempublicam—311, l. 14, for virtatum, *l.* virtutum—313, l. 6, for prefecto, *l.* profecto—315, l. 27, *l.* λαμπρὸς—317, l. 1, for Bazil *l.* Basil—317, l. 7, *l.* ἀπαναθησάμενοι—319, l. 6, insert *a* after such—320, l. 19, for juridicial, *l.* juridical—322, l. 7, *l.* ἀπὸ—323, l. 1, dele, *are*, before, *well-founded*—327, l. 11, for crimes *l. a crime*—335, l. 19, for calls *l. call*—345, l. 9. *l.* συμφοράς—350, l. 33, *l.* μὲν & l. 34 *l.* ἀδίκως—351, l. 3. ὄιόντε—356, l. 28, for condole, *l.* console—370, l. penult. for vol. iv. *l.* vol. ii.—380, l. 1, for τὴι *l.* τὴν—380, l. 31, add, *of speech*, after licentiousness—382, l. 25, for of, *l. for*, before, opinion—386, l. 11, *l.* αὐτῷ—394, l. 18, *l.* οὐδὲ & l. 13, for ϖεραινειν, *l.* ϖεραίνειν—395, l. 28, insert, *not*, *before* be more—404, l. 35, for, in, *l. on*, *before* reading—411, l. 9, for perdidessemus, *l.* perdidissemus—413, l. 33, for que *l.* quæ —424, l. 15, for former, *l. latter*—424, l. 16, for latter *l. former*—424, l. 24, for penitence, *l.* penitents—426, l. 6, for sensient, *l.* sentient—449, l. 7, for style, *l. time*—468, l. 1, for pæniteat, *l.* pæniteat—475, l. 26, for inflictions, *l.* infliction—477, l. 15, for dinturn. *l.* diuturn.—477, l. 23, insert, *it*, after executed—511, l. 13, for information, *l.* reformation—519, l. 4, *l.* millennium—525, l. 33, instead of from, *l. in consequence of*—530, l. 8, for ϖαίαιονς, *l.* ϖλάισης —532, l. 17, *l.* δεῖ—533, l. 25, *l.* ἀριστοκραλικᾶ—534, l. 17, *l.* τοῦτο δ' αὐτῷ—534, l. 23, *l.* ἐϖαφροδίτᾳ—536, l. penult. *l.* ϖολλῷ τοιοῦτόν σε—540, l. 18, for brevis, *l.* breves

—547, l. 24, *l.* ῥήματα—557, l. 24, *l.* ἐστὶν ἔτι—558, l. 11, Satirus, *l.* Satyrus—559, l. 17, *l.* ἔκπωτον—562, l. 11, for proprius, *l.* propius—580, l. 6. *l.* καλοκἀγαθοὶ—581, l. 14, for ἀρχῆσι, *l.* ἄρχαῖσι—585, l. 17, ἐνθυμήματα, & l. 21, *l.* κατέβην χθὲς—586, l. 1, for scribam, *l.* sciebam—596, l. 11, for ἀὼι, *l.* ἀπὸ—597, l. penult. for was, *l. would be*—603, l. 24, for ἀσθενῆας, *l.* ἀσθενείας—603, l. 30, for ισε, *l.* ἴση, and for Αθεναιων, *l.* Ἀθηναίων—604, l. 11, Halicarnassensis, *l.* Halicarnasseus—604, l. 34, *l.* ἀναρριχᾶσθαι, & 36, for ἰχδὴν, *l.* ἴγδην—605, l. 7, *l.* τὸν, & 31, *l.* φωνᾶντα—608, l. 1, for ὑποθεοις, *l.* ὑποθέσις, l. 2, *l.* κεχαρισμένη, l. 4, after δεῖ, add, ἐπὶ τὴν γραφὴν πραγμάτα παραλαβεῖν, καὶ τίνα παραλιπεῖν—609, l. 29, for idolators, *l.* idolaters—616, l. 10, for ways, *l. wary*—623, l. 3, for truths, *l. truth*—628, l. 14, dele marks of quotation from "after," to "tenets," l. 20—631, l. 7. *l.* μὴ—631, *l.* 14, for Vossii, *l. Bosii*—631, l. 19, *l.* χρῆσθαι—631, l. 22, *l.* γὰρ—631, l. 22, *l.* ἐχρῶντο, ἀι δὲ—631, l. 27, *l.* χρῆσθαι—633, l. 25, for proprias, *l.* proprios—638, l. 11, for deserves, *l. deserve*—642, l. 22, *l.* συγχρητισμὸς—662, l. 31, before severity, insert, *acts of*—665, l. 1, for, of, *before* self-preservation, *l. or*—676, l. 8, insert *a*, before, generous—685, l. 19, for imprimis, *l. in primis*—688, l 4, put a full stop after freedom. For there, *l.* There.—702, l. 4, dele, but—722, l. 28, 29, for, were the prayer and the apology, *l. was the prayer blended with apology*—740, l. 33, for their, *l.* his—745, l. 10, *l.* ἧττον—746, l. 8, *l.* γὰρ, and for κεκόλάσθαι, *l.* κεκολάσθαι—749, l. 20, for academies, *l.* academics—764, l. 14, dele, not, *before*, been employed—771, l. 2, for αγνιν, *l.* ἄγειν, l. 3, ἱρόπον ἱινὰ—772, l. 26, for επιβλην, *l.* ἐπιβλὴν, l. 30, *l.* πρόνοια—784, l. 1, for prepossessions, *l. professions*—786, l. 15, dele comma after ταύτης—798, l. 25, *l.* δικατηρίοις—798, l. 27, *l.* ἐυρεσιλογίαις—802, l. 30, *l.* ὄνειδος—806, l. 13, for sown, *l.* sewed—813, l. 12, *l.* emittit, before imprudens—818, l. 16, for grotissimus, *l.* gratissimus—821, l. 32, for art, *l. arts.*

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